Government of Bombay
Legal Department

Report of the Committee on Legal Aid and Legal Advice in the State of Bombay

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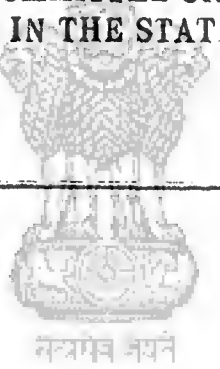
REPORT OF THE COMMITTEE ON LEGAL AID AND LEGAL ADVICE IN THE STATE OF BOMBAY.



Members of the Committee.

1. The Honourable Mr. Justice N. H. BHAGWATI (*Chairman*).
2. The Advocate General, Bombay.
3. Mr. P. B. SHINGNE, B.A., LL.B.
4. Mr. H. V. PATASKAR, B.A., LL.B., M.L.A.
5. Mr. A. A. KHAN, M.A., LL.B., M.L.A.
6. Mr. L. M. SHRIKANT, B.A., M.L.A.
7. The Secretary to Government, Legal Department and Remembrancer of Legal Affairs (Mr. P. M. LAD, I.C.S.).
8. The Secretary to Government, Finance Department (Mr. B. VENKATAPPIAH, I.C.S.).
9. Mr. L. C. GANDHI, M.A., LL.B., Government Pleader and Public Prosecutor, Surat.
10. Mr. B. V. JAKATI, Government Pleader and Public Prosecutor, Belgaum.
11. Mr. NAYAN H. PANDIA, M.A., LL.B., Solicitor, Secretary, Bombay Legal Aid Society.
12. Mr. J. M. BAROT, Advocate (O. S.), Presidency Magistrate, Bombay.

Mr. R. M. MEHTA, M.A., LL.B. (*Secretary.*)

INTRODUCTION.

1. On the 25th May 1944 the Lord Chancellor, Viscount Simon appointed a Committee with Lord Rushcliffe as the Chairman "to enquire what facilities at present exist in England and Wales for giving Legal Advice and Assistance to poor persons, and to make such recommendations as appear to be desirable for the purpose of securing that poor persons in need of legal advice may have such facilities at their disposal, and for modifying and improving, so far as seems expedient, the existing system whereby legal aid is available to poor persons in the conduct of litigation in which they are concerned, whether in civil or criminal courts." The Committee submitted its report to the Lord Chancellor in May 1945.

2. Its main recommendations were :—

(1) Legal aid should be available in all Courts and in such manner as will enable persons in need to have access to the professional help they require ;

(2) This provision should not be limited to those who are normally classed as poor but should include a wider income group ;

(3) Those who cannot afford to pay anything for legal aid should receive this free of cost. There should be a scale of contributions for those who can pay something towards costs ;

(4) The cost of the scheme should be borne by the State, but the scheme should not be administered either as a department of State or by local authorities ;

(5) The legal profession should be responsible for the administration of the scheme, except that part of it dealt with under the Poor Prisoners' Defence Act ;

(6) Barristers and solicitors should receive adequate remuneration for their services ;

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(9) The term "poor person" should be discarded and the term "assisted person" adopted.

3. In a letter dated 27th December 1945 addressed to the Law Member of the Government of India, the Honorary Secretary of the Bombay Legal Aid Society, while inviting the Government of India's attention to the Report of the Rushcliffe Committee and recommending

the appointment of a similar Committee in India said, "In a country like India, where poverty is added to ignorance and where no facilities for legal aid and advice are provided by the State, except in the way of 'pauper procedure' and assignment of counsel in 'murder cases', the appointment of a committee to examine the matter of legal aid in British India and make its recommendations to Government, is eminently desirable, necessary and called for. I need hardly add more on the subject." Acting on the suggestion, the Government of India, in a circular letter No. D.10/46-C. & G. (Judl.) of 11th December 1946 addressed to all Provincial Governments invited the views of those Governments on the general question whether further provision should be made for legal aid to poor persons and if so on the lines which this further provision should take.

4. While the Government of India's letter was under consideration of the Government of Bombay the following Resolution was tabled in the name of Mr. Shantilal H. Shah, M.L.C., in the Bombay Legislative Council in September 1947.

> "This Council recommends to Government to appoint a Committee to consider whether it is desirable to give legal aid at Government cost to poor and deserving persons who have to come before the Courts of Law and if so, what steps (including legislation) should be taken for giving such aid."

5. The suggestion was repeated in another Resolution proposed to be moved by Mr. J. H. Shamsuddin, M.L.A., in the Bombay Legislative Assembly in January 1949.

> "This Assembly recommends to Government to take immediate steps to provide facilities at Government cost for legal aid and assistance in all civil and criminal Courts in the Province to persons with limited means who cannot afford to pay for it."

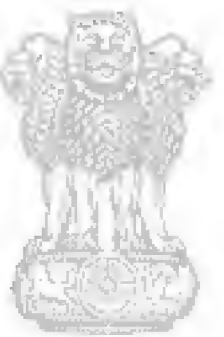
6. The proposal envisaged in these Resolutions was accepted by Government of Bombay and under Government Resolution (Legal Department) No. 3157, dated the 23rd March 1949, we were appointed a Committee to consider the desirability of giving legal aid at Government cost to poor persons, to persons of limited means and to persons belonging to Backward Classes in civil and criminal proceedings and to make recommendations to Government regarding the steps to be taken for implementing our suggestions. The terms of reference to the Committee were set out as under :—

> "To consider the question of grant of legal aid in civil and criminal proceedings to poor persons, to persons of limited means and to persons belonging to Backward Classes at Government cost and to make such recommendations as may be desirable so as to render justice more easily accessible to such persons including recommendations on the question of encouragement and financial assistance to institutions engaged in the work of such legal aid."

7. We commenced work on the 16th April 1949 and held 19 sittings of which 10 were for hearing evidence. Our first task was to issue a comprehensive questionnaire which is reproduced in Appendix I for eliciting public opinion on the problem before us. Copies of the questionnaire were forwarded to (1) all Judges of the High Court and all members of the judiciary in the Province, (2) all Bar Associations in the Province, (3) prominent members of the legal profession and (4) several social workers. The total number of replies received by us was 343. The names of those who submitted their replies are given in Appendix II. We examined 48 witnesses whose names are given in Appendix III.

8. Out of the Members of the Committee, Mr. A. A. Khan had signified his assent to his appointment as member of the Committee but did not attend a single meeting even though due intimation was given to him of all the meetings. We have not had the benefit of his presence and guidance at all in the work which we have done and is reflected in this Report.

9. We take this opportunity of expressing our thanks to those witnesses and to others who have given assistance to us in our task by their oral evidence and written replies to the questionnaire. We also express our thanks to our Secretary Mr. R. M. Mehta, M.A., LL.B., for the efficient and unstinting aid which he gave us all throughout the preparatory stage, the conduct of the proceedings before the Committee, the final deliberations and particularly the preparation of our Report.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PART I.

Freedom and Equality of Justice.

"To no one will we sell, to no one will we refuse or delay, right or justice."
Magna Carta, Cap. 40.

10. Equal protection to all is the cornerstone of our system of living; and equality under the law, i.e., one and the same law for the rich and the poor alike; these are recognised to be the fundamental principles underlying the policy of the administration of justice. The framers of the constitution of every State in the United States of America gave concrete expression to this ideal in the various Bills and declarations of rights enacted in the States. The Massachusetts Constitution, adopted in 1780, declared:

> "Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws."

This ideal was repeatedly emphasized by decisions of courts, in the speeches of statesmen, and in treatises on government. The New Hampshire constitution (1792) Part I, Bill of Rights, sec. 35, thus expressed it:

> "It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws and administration of justice."

11. One of the articles of the Swiss Constitution provides that all Swiss are equal before the law, and the Federal Court of Switzerland has gone to the length of declaring certain enactments of other countries as being invalid on the ground that they contravened or were repugnant to those articles. In the subjective Resolution which was passed by the Constituent Assembly of India and which is embodied in the draft of our Constitution as a preamble, it is declared that the people of India have solemnly resolved to secure to all its citizens justice—social, economic and political.

12. The consequences which inevitably flow from such form of Government have been thus summarised by Reginald Heber Smith in his Treatise on Justice and the Poor:

> "First, there can be no political, social, or economic equality, no democracy, unless the substantive law by fair and equitable rules gives reality to equality by making it a living thing. Second, the substantive law, however fair and equitable itself, is impotent

to provide the necessary safeguards unless the administration of justice, which alone gives effect and force to substantive law, is in the highest sense impartial. It must be possible for the humblest to invoke the protection of law, through proper proceedings in the courts, for any invasion of his rights by whomsoever attempted, or freedom and equality vanish into nothingness.

To withhold the equal protection of the laws, or to fail to carry out their intent by reason of inadequate machinery, is to undermine the entire structure and threaten it with collapse. For the State to erect an uneven, partial administration of justice is to abnegate the very responsibility for which it exists and is to accomplish by indirection an abridgment of the fundamental rights which the State is directly forbidden to infringe. To deny law or justice to any person is, in actual effect, to outlaw them by stripping them of their only protection.

It is for such reasons that freedom and equality of justice are essential to a democracy and that denial of justice is the short cut to anarchy."

13. The aim of every Government is and must be that there must not be a denial of justice. President Taft in an address before the Virginian Bar Association observed :

"Of all the questions which are before the American people, I regard no one as more important than the improvement of the administration of justice. We must make it so that the poor man will have as nearly as possible an equal opportunity in litigating as the rich man."

14. Denial of justice is not merely negative in its effect. It actively encourages fraud and dishonesty. The evil is not one of class in the sense that it gives the poor over to the mercies of only the rich. It enables the poor to rob one another. The line of cleavage which it follows and accentuates is that between the dishonest and the honest. Everywhere it abets the unscrupulous, the crafty, and the vicious in their ceaseless plans for exploiting the less intelligent and less fortunate fellows. What is advocated is that the law, or correctly speaking, the system of administering justice, should not be allowed to become the means of extortion. The effects of this denial of justice are far-reaching. Nothing rankles more in the human heart than the feeling of injustice. It produces a sense of helplessness, then bitterness. It is brooded over. It leads directly to contempt for law, disloyalty to Government, and plants the seeds of anarchy. The conviction grows that law is not justice and challenges the belief that justice is best secured when administered according to law. The poor come to think of justice as containing only laws that punish and never laws that help. A belief takes root that there is one law for the rich and another for the poor.

15. The point has been admirably expressed in a publication of the United States Department of Labour:

> "……the problem of making justice, readily accessible to all, including the great army of wage-earners, is far more than an abstract legalistic controversy. It is a matter of life and death for a democracy because, in the words of Harlan F. Stone, formerly Attorney-General of the United States and now a Justice of the Supreme Court, a democracy 'cannot survive if it cannot find a way to make its administration of justice competent.'"

In similar vein Mr. Chief Justice Hughes says:

> "It is idle to speak of the blessings of liberty unless the poor enjoy the equal protection of the laws."

Lord Shaw, in his address to the American Bar Association in 1922, stated the point without quibble or evasion when he said:

> "That society is rotten where one citizen as against another can overpower him or undermine him by law wielded with an uneven hand. Only the blind, cruel, or the unjust in heart can wink the eye at this unnameable curse."

16. The defects in the administration of the law, which result in the denial of justice, fall into three distinct divisions. In the language of Piers Plowman:

> "To the poor the Courts are a maze,
> If he plead there all his life,
> Law is so lordly
> And loath to end his case;
> Without money paid in presents
> Law listeneth to few."

These three difficulties are:

(1) the delays of justice in Court,

(2) the heavy court costs and fees, and

(3) the heavy fees which have got to be paid to the trained lawyers whose assistance cannot be derived except against payment.

17. The mitigation of this evil has engaged the attention of several administrators and workers in the field of social welfare. In England as in every other civilized country the most obvious hardships have been mitigated by the introduction of legal aid.

18. No doubt absolute equality in the administration of justice is a dream. Even leaving aside superiority of brains and education, the man who can afford to pay for the very best counsel and to provide against every possible contingency, without counting the cost, will have the advantage. Litigation is still "trial by battle under another form; counsel being the champions and purses the weapons." Yet

it is surely not putting the case too high to say that every citizen of a democracy should be in a position to take all reasonable and prudent steps which may be necessary to safeguard his legal rights. In this sense equality before the law can easily be attained. The problem arises from the poverty (compared with legal costs) of a large section of the population, and it can be solved by money.

19. This problem of legal aid is under the modern conception of the obligations of the State treated on a par with the insurance schemes and old age pensions and even education and medical relief which the State is under an obligation to provide to all its citizens. It is said that there are three primary functions of the State :—

(1) executive, (2) legislative, and (3) judicial; and these functions should be discharged by the State so as to provide equal benefit to all. If one has regard to the manner in which the several problems have been approached in the modern civilised States, there is no doubt that the conception of the obligations of the State has advanced in recent times and it is considered more and more the obligation of the State to provide for these needs of the citizens. In England we have various schemes put forward for National Health Insurance, National Medical Service, etc. and it would not be much out of the way to suggest that the State should also take upon itself the burden of providing legal aid so as to bring about the freedom and equality of justice which is the ideal of any democratic State. It is really necessary for the State in order to carry out its obligations to the citizens to provide a scheme whereby all its subjects, rich as well as poor, would be on a level of equality to fight out their respective causes and there will be no negation of the fundamental right of equality of every subject before the law which is one of the articles of our Draft Constitution.

20. While recognizing this obligation of the State to provide for legal aid in the manner above indicated, it has been urged that the State should not undertake any such scheme because, firstly, the provisions will be abused, there will be an increase in litigiousness, there would be a premium put on dishonesty, and murderers, dacoits, robbers, thieves and criminals will be let loose on society; secondly, the scheme would impose an inordinately heavy financial burden on the Exchequer as there are in India a vast majority of litigants who are poor, and it would be next to impossible to reach legal aid to all poor persons and persons of limited means; and thirdly, it is unnecessary to provide legal aid in the mofussil where litigation is stereotyped and the results would be generally the same whether with or without legal aid. The advocates of these views therefore would rest content merely with the provisions as they do exist at the present, viz., temporary remission or suspension of payment of court fees and law charges in civil cases and provision for advocates in criminal cases where the accused are charged with offences punishable with death or long term of imprisonment.

21. The arguments which have been advanced against the State providing legal aid as above have failed to impress us. The fear that litigation will increase and the people will become more litigious is really unfounded. As has been observed by Egerton on Legal Aid when dealing with a similar objection:

> "One of the unacknowledged reasons", says "Barrister","for restricting the facilities for poor men's litigation is that, if they were really given adequate means for enforcing their rights or defending themselves against injustice, the courts would be choked with a huge volume of additional work, at an expense which the governing class is unwilling to face." Actually there is no reason why the amount of litigation should be enormously increased or why the cost of adequate measures should be more than a minute fraction of the national expenditure on social services.

22. We have also the testimony of no less a person than our Premier, the Honourable Mr. B. G. Kher, who observed in his inaugural address delivered at the Bombay Provincial Legal Aid Conference, 1949, as under:

> "It is at times objected that if a poor man is given free legal aid, there would be an increase of litigation. The experience of all properly organised and conducted legal aid societies in America shows that acquainting the poor with their legal rights tends in fact to decrease litigation and frequently leads to speedy settlement out of court. In all such matters, legal advice outside courts is of much greater importance than legal aid in the conduct of cases. With my personal knowledge acquired over a large number of years of the working of the Bombay Legal Aid Society, as also my experience of the legal profession in this Province, acquired during 25 years of practice, I can safely say that this conclusion reached by the American Legal Aid Societies is quite sound and correct."

23. As regards the apprehension that the provisions of legal aid will be abused, that premium would be put on dishonesty and murderers, dacoits, robbers, thieves and criminals will be let loose on society, it has only got to be observed that this apprehension is the result of want of faith in the proper working of the legal aid scheme. Any legal aid scheme which is sponsored by the State with the safeguards which we propose to provide will properly scrutinise the financial position of the applicant for legal aid, and will also scrutinise whether in regard to civil ligigation there is a *prima facie* case or defence and whether in regard to criminal matters it is in the interest of justice that legal aid should be granted. It is too much to say that murderers, dacoits, robbers, thieves and criminals will be let loose on society because the whole system of our jurisprudence is based on the presumption of innocence and the burden of proof being on the prosecution to prove beyond reasonable doubt that the person accused of a certain offence is really guilty of the same; and to provide legal aid to the really deserving

accused, so that the Court's mind is focussed on the question whether these cardinal principles of our jurisprudence are being observed will not by any means be tantamount to letting loose on the society, murderers, dacoits, robbers, thieves and criminals. On the contrary, the provision of legal aid in proper cases would lead to a thorough sifting of the evidence against the accused and to the proper discharge of the burden which lies on the prosecution to prove beyond reasonable doubt that the accused is guilty of the offence with which he is charged, and will save many innocent persons from convictions which they would not suffer from if their cases were properly conducted before the Courts by lawyers assigned by the legal aid committees after proper scrutiny of the type above mentioned. This objection therefore is, in our opinion, without any substance.

24. As regards the objection that the provisions of legal aid would impose an inordinately heavy financial burden on the Exchequer, one has only got to observe that whatever be the burden on the Exchequer, the State should on principle undertake it in any event in regard to the criminal Courts. Whatever may be said with regard to the State undertaking it in civil litigation, those persons who are charged with the several offences under the Indian Penal Code as also the various penal laws which have been put on the Statute Book by the Government from time to time do require legal assistance in order that they may properly defend themselves before the Courts. There are a number of such persons who have not the necessary finances to provide legal aid for themselves in the shape of representation through a lawyer. One has only got to put himself into the position of such unfortunate accused persons in order to appreciate and realise how formidable a task it is for an accused appearing in person unassisted by any lawyer to even appreciate what the ingredients of the offence with which he is charged are and to cross-examine the witnesses whose evidence is led on behalf of the prosecution. One very often comes across cases where on the accused being asked whether he wants to cross-examine the witnesses on behalf of the prosecution merely says that he does not want to cross-examine them or makes a perfunctory attempt at cross-examination which is next to nothing. The result is that, however sympathetic the Court may be, it is impossible for the Court to know all the circumstances attendant upon the case of the accused so as to bring itself to the appropriate state of preparedness for the purpose of effectively cross-examining the witnesses on behalf of the prosecution. It is therefore essential, in our opinion, that in the case of those persons who are accused of the various offences in criminal Courts they should be granted legal aid if they are not in a position on their own to provide for the same. No doubt the burden on the Exchequer will be a substantial one if the State is to take upon itself the burden of providing legal aid in these cases. It may, however, be observed that so far as criminal Courts are concerned, the accused who can afford to scrape together any monies do as a matter of fact employ lawyers for private defence. It is only in those cases

where the accused are not in a position to provide even the fees of a fairly good lawyer at moderate expenses that they go unrepresented. Even in those cases the legal aid would not have to be provided where the offences with which the accused are charged are petty offences or offences in which the punishment would be only fines and not imprisonment. The legal aid would not be provided unless the financial position by way of the earning of income or the possession of capital falls below a particular level prescribed and the legal aid would not be granted unless in the opinion of the legal aid committees it is necessary to do so in the interest of justice. With these safeguards, we hope that the incidence of costs to the State in providing legal aid in the criminal Courts will not impose an inordinately heavy financial burden on the Exchequer. The same are our observations with regard also to the civil litigation. The safeguards in these cases would be, apart from the means test which would be laid down, a further test of there being a *prima facie* case or defence in the matter of the litigation which will be thus taken up by the legal aid committees. There will also be apart from the costs which will be recovered from the unsuccessful opponents a contribution made by the partially assisted person commensurate with his means and also a contribution from the members of the Bar which will be not inconsiderable. Having regard to these circumstances, we feel that the second objection which has been urged by the opponents of the scheme also loses much of its substance.

25. The last objection which has been urged against the State sponsoring any legal aid scheme, is that in the mofussil litigation is stereotyped and the result would be generally the same whether with or without legal aid. This objection is, in our opinion, based on the lack of proper appreciation of litigation in the mofussil. No doubt in the Taluka towns for want of much commercial or industrial development the work may be of a stereotyped nature so far as the majority of the litigants there is concerned. But when we go to the district towns, there is a variegated litigation coming from all the strata of society and it cannot be predicated that litigation coming to the District Court is of a stereotyped nature. Apart, however, from this aspect of the question, what has got to be particularly thought of is whether even in the stereotyped litigation which may come to a majority of the Courts in the mofussil, there are litigants who require to be aided in the matter of either the prosecution or the defence of the litigation. The average financial condition of a villager or a townsman in India is not very much beyond the average and the average is unfortunately for our country very low. The court fees, the process fees, the charges which have to be paid to the witnesses both for transporting them to the Courts and also for their maintenance during the period that their services are necessary, and also the lawyers' fees are a drain on a number of people who have got to go to the Courts. It may be that in petty cases the court fees etc. may not be considerable and the litigant may be able to employ the services of a junior lawyer on a very small payment. In the higher denomination cases, however,

the litigants do require the services of trained lawyers who can really be relied upon by them to see their cases through and the incidence of these costs is heavy. Even though the scales of costs allowable, party and party, have been fixed by the High Court and by the Government, it is rare to find senior advocates or busy lawyers taking up the cases on those scales of fees. Whatever may be the incidence of these costs as between party and party, the litigant himself has got to pay his lawyer much more than the scheduled scale of fees. All this goes to show that even in the mofussil areas the litigant does require legal aid if he does not enjoy sufficient means to provide for the litigation in the ordinary way. We are, therefore, of opinion that even in the mofussil areas it is really necessary that legal aid should be granted in proper cases though of course with sufficient safeguards. It may also be observed that so far as the mofussil areas are concerned, apart from the ordinary litigant whom we have discussed above, there are a number of litigants belonging to the backward classes who comprise within that category persons belonging to the scheduled classes, persons belonging to the aboriginal and hill tribes and persons belonging to the other backward classes who formed a total population of over 46,00,000 in the census of 1941, apart from the population of about 8,00,000 in the merged areas, and who having regard to their position in society are in the greatest need of legal aid. This last objection also therefore is, in our opinion, without any substance.

26. We have, therefore, come to the conclusion that the State should accept the obligation and take upon itself the burden of providing legal aid to poor persons, to persons of limited means and persons belonging to the backward classes.

PART II.

Existing Statutory Provisions for Legal Aid in the Province of Bombay.

27. The provisions for legal aid which are incorporated in the various statutes of the Central as well as the Provincial Legislature are very meagre in character. So far as civil Courts are concerned, these provisions are contained in Order XXXIII and Order XLIV of the Civil Procedure Code. Order XXXIII deals with original suits and Order XLIV deals with appeals.

28. Under Order XXXIII provision is made for the filing of suits by paupers. A pauper is defined as a person who is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his wearing apparel and the subject-matter of the suit. An application for permission to sue as a pauper has to be made to the Court and a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, has to be annexed thereto. The Court examines the applicant or his agent regarding the merits of the claim and the property of the applicant. The application is rejected by the Court where it is not framed and presented in the proper form, or the applicant is not a pauper, or where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or where his allegations do not show a cuase of action, or where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject matter. If after the necessary examination the application is granted, the application is deemed to be the plaint in the suit and proceeds as a suit instituted in the ordinary manner, except that the plaintiff is not liable to pay any court fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit. The Court has the power on the application of the defendant or the Government Pleader to order the plaintiff to be dispaupered if he is guilty of vexatious or improper conduct in the course of the suit, if it appears that his means are such that he ought not to continue to sue as a pauper, or if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter. If the pauper succeeds, the amount of court fees which would have been otherwise paid by him is recoverable by the Provincial Government from any party ordered by the decree to pay the same, and is a first charge on the subject-matter of the suit. If he fails in the suit or is dispaupered, or his suit is withdrawn or dismissed for his default in service of the summons or appearance at the hearing, the Court orders the plaintiff to pay the court fees which would have been otherwise payable by him. These are the provisions applicable to all civil suits which may be filed by paupers under the provisions of the Civil Procedure Code.

29. There are, however, Courts in the Province which have their own provisions enacted in this behalf either in the relevant Acts or the Rules which are framed for the administration of justice in those Courts. The High Court of Judicature at Bombay, for instance, has framed its own Rules in the matter of pauper suits. It has raised the limit of property to Rs. 500 which sum is to be calculated apart from the necessary wearing apparel and the subject-matter of the suit. These Rules also provide for a person being allowed to defend as a pauper and it is laid down that all the terms and conditions contained in Order XXXIII of the Civil Procedure Code apply *mutatis mutandis* to the cases of persons who are allowed to defend as paupers. The Rules also provide for the assignment of an Advocate (O.S.) or an Attorney, or both, to assist the person who is permitted to sue or defend as a pauper and provide that an Advocate (O. S.) or Attorney so assigned shall not be at liberty to refuse his assistance, unless he satisfies the Court or Judge that he has good reason for refusing. The Rules also invest the Court with power to order in fit and proper cases that the court fees which otherwise a pauper may be ordered to pay to the Government on the conclusion of the litigation may be dispensed with and further provide that no cause, suit or matter of this nature shall be compromised on any account whatever without leave first obtained from the Judge in Chambers or in Court. The City Civil Court has also Rules framed in this behalf. They follow the model of the Rules which have been framed by the High Court, but they omit the provision as regards the assignment of an Advocate for the person who is admitted to sue or defend as a pauper and also omit the provision as regards the Court being invested with the power to dispense with the payment of the court fees etc. by the pauper as also the leave to be obtained from the Judge in Chambers or the Court before any suit, cause, or matter of this nature be compromised by the pauper plaintiff or the defendant. So far as the Presidency Small Cause Court is concerned, the Rules which have been made by the High Court containing the procedure and practice of the Court of Small Causes, Bombay, do not contain any reference to pauper suits except in rule 36 which only says that applications for leave to sue in *forma pauperis* shall be disposed of by the Registrar. The whole thing is thus left to the discretion of the Registrar who deals with all applications for leave to sue in *forma pauperis*.

30. Order XLIV of the Civil Procedure Code deals with pauper appeals. It provides that any person entitled to prefer an appeal, who is unable to pay the fee prescribed for the memorandum of appeal, may be allowed to appeal as a pauper, subject to the provisions relating to suits by paupers in so far as applicable; provided, however, that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust. If the applicant had been allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry as to pauperism is necessary, unless the Appellate Court sees cause to direct such inquiry.

These are the only provisions to be found in the relevant Acts of the Legislature in regard to suits or appeals in *forma pauperis*.

31. As regards criminal Courts, there is a provision made for the employment of a pleader for the defence of persons accused of offences punishable with death in all cases committed for trial in the criminal sessions of the High Court or in the Court of a Sessions Judge and in confirmation cases, references from the verdict of juries, appeals from acquittals and enhancement proceedings in revision in which any person is liable to be sentenced to death. In those cases the accused is informed by the Committing Magistrate at the time of committal or if the case has already been tried, by the trial Court that unless he intends to make his own arrangement for legal assistance the High Court will engage a pleader at Government expense to appear on his behalf.

32. Besides the above provisions, there are rules made on the Appellate Side of the High Court with regard to defence of certain criminal cases. These rules provide that when papers are received in a case submitted for confirmation of a death sentence, or in a reference from the verdict of a jury (*a*) in which the accused has not been found guilty of an offence by the jury but the Sessions Judge considers him to have committed an offence and (*b*) in which the Sessions Judge considers the accused to have committed some more serious offence than that of which the jury have found him guilty, or an appeal against acquittal, or enhancement proceedings in revision and when the accused is undefended, the Government Pleader should be asked by the Registrar's office to have copies of the Magisterial papers, other than the committal order, prepared for the defence. Further preparation of copies is to be stopped if the accused afterward appoints an Advocate or Counsel for his defence. If no Advocate or Counsel for his defence has been appointed by the accused on the Wednesday preceding the hearing of the case, an Advocate is retained by the Registrar for the defence of the accused, and that Advocate is paid his fees for the case even though the accused afterwards appoints his own Advocate or Counsel.

33. The scope of this legal aid is expanded by certain resolutions of the Government of Bombay, Home Department, in connecton with the engagement of Counsel at public expense in jail appeals. This provision was first made on the 15th August 1945 and has been continued from time to time, the last of the relevant resolutions being dated 3rd February 1948 whereby it is provided that when an appeal preferred by a convict from a jail is admitted by the High Court, the Registrar should engage an Advocate for him at public expense if no Counsel is engaged by the appellant and if he is not in a position to engage a Counsel. These orders are to be in force for a period of 3 years with effect from the date of their issue. These are the only provisions to be found in respect of legal aid to the accused in criminal cases.

34. Besides these provisions for legal aid in civil and criminal matters the Government have provided for the creation of posts of

Debt Relief Assistants by their resolution dated 3rd February 1949. The resolution recognizes that it is necessary to help illiterate and backward class agricultural debtors in preparing applications, statements, etc. in cases under the Bombay Agricultural Debtors Relief Act and to watch their interest before the civil Courts and has therefore sanctioned the creation of 31 posts of Debt Relief Assistants distributed amongst the various districts of the province and lays down that the assistance rendered by these Debt Relief Assistants should not be restricted to backward tribes or to any particular section thereof but that they should help all illiterate and backward agricultural debtors who are parties to proceedings under the Bombay Agricultural Debtors Relief Act, whatever the caste, community or religion of such debtors. It says that as the debtors are not in a position to put up their cases properly before the civil courts, the Debt Relief Assistants, in the discretion of the Civil Judges concerned, should be allowed to examine and cross-examine the witnesses in proper cases.

35. The Government have also by their resolution dated 24th April 1941 provided for the grant of legal assistance to the members of the aboriginal and hill tribes. This provision was made in order that the members of such tribes should be able to obtain free advice and representation from the Government Pleader or other pleader appointed for the purpose not only when proceedings are threatened against them but also when they consider that they themselves have been defrauded and that the cost of such consultations and representations should be borne by the State. This provision was made in the first instance for the parties concerned in the West Khandesh and Broach and Panch Mahals. But the provision has been since extended to the districts of East Khandesh, Thana, Kolaba and Nasik. Rules have been framed for the grant of legal assistance to members of these tribes which provide for the assistance being rendered unto them in the manner therein mentioned by the Government Pleader or the Subordinate Government Pleader or the assistant or assistants of the District Government Pleader. As regards both these classes provision has been made by the Government for assistance to be rendered also in the Appeal Courts. A letter was addressed by the Government of Bombay, Revenue Department, to the First Class Subordinate Judge, Godhra, Copies forwarded to the Commissioner, N. D., the Collector of Broach and Panch Mahals, the District Judge, Broach and Panch Mahals, the Additional District Government Pleader, Broach and Panch Mahals, etc., prescribing the procedure and the conditions in the matter of the grant of legal assistance to the backward class debtors in the appeal Court. If the debtor required the assistance of the Government Pleader, the Debt Adjustment Board was to communicate the fact to the Appellate Court and request it to issue notice to the Government Pleader, and the Government Pleader was to assist such debtors in the Appellate Court. The aboriginal and hill tribes were included in the term backward classes for the purpose of this aid and this provision was equally applicable to them as to the members of the backward classes as such.

36. The Government have recently by their Resolution dated 7th September 1949 exempted aboriginal and hill tribes from payment of court fees and stamps in respect of documents of any kind specified in 1st or 2nd schedule to the Court Fees Act VII of 1870 to be filed, exhibited or recorded in any civil or criminal Court. This exemption is going to be in force for a period of 1 year from 7th September 1949.

37. As regards Courts other than the civil and the criminal Courts above mentioned, there is a provision to be found for legal aid to be given to Unions on the approved list enacted in section 26 of the Bombay Industrial Relations Act, 1946. It provides for legal aid to approved unions at Government expense in important proceedings. Approved Unions have been defined as Unions on the Approved List, and section 26 enacts that any approved union entitled to appear (*a*) before a Labour Court in a proceeding for determining whether a strike or lockout, closure, stoppage or change is illegal, or (*b*) before the Industrial Court in a proceeding involving in the opinion of the Court important questions of law or fact, may apply to the Court for the grant of legal aid at the expense of the Provincial Government. The Court institutes an inquiry after such application has been received and after considering the evidence adduced before it may either grant or refuse the application. It is significant to note that in sub-section (7) of this section 26, for the purposes of this section legal aid is inclusive of legal advice to the Union and the appearance before a Court of a legal practitioner on behalf of the Union. This is a tacit recognition by the Legislature that legal aid includes legal advice also.

38. Rules have been framed by the Government under section 32 of the Workmen's Compensation Act, 8 of 1923, and rule 34 provides that if the Commissioner is satisfied that the applicant is unable, by reason of poverty, to pay the prescribed fees, he may remit any or all such fees. If the case is decided in favour of the applicant, the prescribed fees which, had they not been remitted, would have been due to be paid, may be added to the costs of the case and recovered in such manner as the Commissioner in his order regarding costs may direct.

39. These are the only provisions for legal aid which are to be found in the relevant Statutes of the Central and the Provincial Legislatures and the Resolutions passed by the Government.

40. Besides these official facilities for legal aid and advice, there are various unofficial agencies which do try and render legal aid to impecunious litigants. It is usual for large employers of labour to employ lawyers for giving free legal aid and advice to their employees. There are labour unions also who employ lawyers to represent the cases of their members before the Labour Court and the Industrial Court. Besides the above unofficial agencies, there have of necessity sprung up organisations which are called claims agencies which purport to render legal aid in workmen's compensation cases. Whenever there is an accident and compensation is claimable by the injured workman

from his employers these claims agencies set themselves in motion, approach the injured workman, represent his case before the Workmen's Compensation Courts, collect evidence on his behalf and carry the case to its normal conclusion. These claims agencies work on a scale of remuneration which is an aliquot part of the amount which they succeed in getting for the injured workman from his employers. Besides the above agencies, there are individual lawyers who out of charitable or philanthropic motives do work for the poor people without charging any remuneration for the services rendered unto them. There are besides, Legal Aid Societies, in Bombay as well as some mofussil areas, the foremost among them being the Bombay Legal Aid Society working in Greater Bombay. We shall have more to say on the working of the Bombay Legal Aid Society hereafter. The Legal Aid Societies in the mofussil areas are the Maharashtra Legal Aid Society in Poona, Ahmednagar Legal Aid Society in Ahmednagar, and the Dharwar Legal Aid Society in Dharwar, and Legal Aid Societies at Nasik and Bijapur. These are all the existing organisations and provisions for rendering legal aid to the impecunious litigants appearing before the various Courts in the Province. They are, however, absolutely insufficient to provide the necessary legal aid to all persons who deserve the same.

41. Apart from the fact that the litigant who desires to obtain the rudimentary assistance in his civil litigation is known by the uncomplimentary designation of "pauper", the one criticism which can be offered against the provision enacted in the definition of "pauper" contained in Order XXXIII of the Civil Procedure Code is that the court fee payable on the plaint is comparatively a small fraction of the total expenses which the litigant is called upon to bear in any fairly contested litigation, and to confine legal aid to only that class of persons whose total means do not exceed the amount of court fee payable on a plaint, and that too in respect of court fee only, is in effect denying any assistance. Even for securing this modicum of assistance the litigant has got to go through a searching enquiry as to his claim to pauperism. For all the expenses required to be incurred for prosecuting the suit the pauper plaintiff is put on the same footing as an ordinary litigant. One notable lacuna which obviously handicaps the pauper plaintiff is that neither the Code, nor the Rules made nor Circulars issued by the Courts provide for assigning a lawyer who would be bound to act and work for him, except in the High Court where the Rules framed on the Original Side do provide for the assignment of an Advocate (O. S.) or an Attorney or both to a litigant in the event of his being allowed to sue or to defend in *forma pauperis*. Even the payment of the court fee is in a sense deferred. If the pauper plaintiff loses the suit partially or wholly he will be rendered liable for payment of the court fee as ordered by the Court, except in the High Court where the Court in proper cases sees reason to dispense with the fees at the conclusion of the pauper suit. The right of appeal by a pauper appellant is limited by several restrictions such as the *prima facie* satisfaction of the Appeal Court that he has a good case on

a substantial question of law or that the decision of the trial Court i unjust. In view of the nature of the assistance given and the extent an indigent defendant has no opportunity of obtaining any assistanc in the litigation, so far as the trial court is concerned, again, excep in the High Court where he is allowed to defend in *forma pauperis* It is obvious, therefore, that the poor and indigent litigants who ar required to litigate their claims before Courts in the districts, do no obtain any legal aid in any real sense of the term. The same criticism will to a large extent apply also to litigants who apply before the City Civil Court in Greater Bombay. There is no provision for legal advic before litigation is actually embarked upon. During the course o the litigation, a very small class of poor persons who satisfy the stric definition of the word "pauper" get the doubtful benefit of deferring payment of the court fee payable on the plaint; the pauper has go to bear all the incidental expenses and to pay the usual fee to the lawyers engaged by him; and if the pauper litigant happens to be an appellant he is put under an additional handicap to which the other litigants are not subject, i.e., that he must approach the appea Court within thirty days from the date of the decree of the Court from whose decision the appeal is preferred and he must satisfy, beside his status as a pauper that his appeal raises a substantial questio of law, or that the decision is otherwise erroneous or unjust meaning thereby *prima facie* erroneous or unjust. As it has been observed before in the High Court of Judicature at Bombay, the position is slightly better inasmuch as according to the Rules obtaining on the Origina Side for the actual conduct of the case, Counsel or Attorney must attend to the cause without any expectation of remuneration from the pauper litigant.

42. The position of the litigant in a criminal Court if not worse is certainly not better than that of a litigant in a civil Court. Under the rules at present obtaining except in cases where an accused person is charged with an offence for which capital sentence may be inflicted there is no provision for giving any legal assistance in the courts of trial, and only in cases where the accused is charged with the commission of capita offences in an appeal court or where the Government prefers an appeal against an order of acquittal by the trial Court that lawyers are assigned to an accused person in the appeal. There is no doubt a further provision for the assignment of Advocates in those cases where appeals are preferred from jail and the convict is not in a position to provide his own lawyer or Advocate. Beyond exempting a person in custody from payment of court fee, there is no other assistance in any criminal Court. It is obvious that the high incidence of court fee on the plaints and other incidental proceedings, and the remuneration required to be paid to lawyers, renders litigation even in assertion of genuine claims a luxury not within the reach of the poor or even the middle-class citizens. The provision which is made for assistance to backward classes and to members of aboriginal and hill tribes is also limited in character. It mainly touches those cases where the particular party is concerned in

civil litigation arising out of the provisions of the Bombay Agricultural Debtors' Relief Act and the actual extension of the legal aid in those cases. Where in criminal proceedings instituted against persons belonging to the aboriginal or hill tribes such person believes that the proceedings are really disguised civil proceedings or are intended to intimidate him, or if such person desires to institute any civil proceedings or proceedings under the Mamlatdars' Courts Act, 1906, he is granted legal assistance under certain conditions laid down in the Rules prescribed for the grant of legal assistance to the members of the aboriginal or hill tribes. These provisions do not touch the cases in criminal Courts where the members of those backward classes or the aboriginal or hill tribes are accused of offences other than those punishable with death.

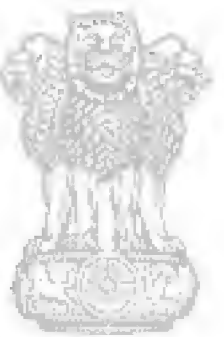
43. The provision for legal aid in Labour Courts and Industrial Courts which is enacted in section 26 of the Bombay Industrial Relations Act, 1946, is also inadequate. It does not take count of those cases where individual workmen have got to vindicate their grievances before the respective Courts. If they happen to be members of the Labour Unions and the Labour Unions have funds enough to employ lawyers they might possibly be in a position to get legal aid. In those cases, however, where they do not belong to any labour unions or if the labour unions to which they belong are not approved unions or if those unions have not got funds enough to employ lawyers, they necessarily go unrepresented and they get whatever redress it is possible for the Court to give unassisted by any proper legal aid in the matter of the adjudication of the disputes before them. This provision, therefore, is really inadequate both in its nature and extent.

44. The position of the impecunious litigant becomes still more difficult when we consider his position before the Workmen's Compensation Courts. There also inspite of the provision contained in rule 34 of the Workmen's Compensation Rules afore-mentioned which only provides for the remission of the prescribed fees, it is always difficult for such a litigant to procure legal aid on his own, and the claims agencies step in to solve the problem of legal aid. They have no recognised status in the Court as such, but they are allowed to appear as otherwise the case of the impecunious workmen would be unrepresented and possibly suffer by default. An opinion has been expressed before us that these claims agencies charge as remuneration for their work a particular share in the amount recovered through their exertions and they also maintain and finance the impecunious workman during the interval so that out of the advances which are made to him he may keep his body and soul together. Whatever may be said in favour of the existence of these claims agencies, one cannot shut his eyes to the fact that the agreements between them and the impecunious workmen are in the nature of champertous agreements and should be discouraged as far as possible. These circumstances make it all the more necessary that the State should step in and grant legal aid to such mpecunious workmen in order that they may prosecute their claims in the Workmen's Compensation Courts against their employers.

45. The help rendered by individual lawyers howsoever charitable or philanthropic they may be, is of necessity limited in its character and that cannot embrace all cases which do require legal aid in the civil as well as criminal Courts.

46. The Legal Aid Societies also suffer from a great disability in behalf of the work which they have been doing. It may be noticed, that the Legal Aid Societies which have been mentioned above as existing in the mofussil areas have not been able to do any particular work for giving legal aid to the poor; either they have been recently started or they have not been able to do much work in the cause of legal aid for want of proper organisation or guidance in that behalf. The work which has been thus done in the mofussil areas is quite negligible. The Bombay Legal Aid Society is the only Legal Aid Society which has worked in that behalf and has done yeoman work in the cause of granting legal aid to the poor in Greater Bombay. Even there, the Bombay Legal Aid Society is working under very great handicaps and has not been able to embrace all the work for the people who require legal aid. Its funds are limited, its members and workers are limited, and the only grant which it gets is a grant of Rs. 300 per year from the Government, besides a donation of Rs. 300 per year from Sir Ness Wadia, K.B.E. This is obviously insufficient to maintain even one stenographer or clerk or the necessary number of peons who would be required if the work has got to be carried on in a proper way. The manner in which the Bombay Legal Aid Society is functioning will be described in the later part of this Report. Suffice it to say that for all the work the Bombay Legal Aid Society has been doing in Greater Bombay it can only touch the fringe of the problem and is not at all sufficient, having regard to the great volume of the work which has got to be done in the matter of legal aid.

47. We are, therefore, of opinion that the existing provisions for legal aid, statutory and otherwise in the province, are inadequate and unsatisfactory and require to be extended both in their nature and scope if the problem of legal aid has got to be rightly tackled.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PART III.

Scheme for Legal Aid.

48. As has been observed before legal aid includes legal advice. Legal aid comes in when a matter is actually before a Court or a tribunal. Legal advice is to be rendered in the preliminary stages before any proceeding is launched before a Court or a tribunal. The real demarcation between legal aid and legal advice is laid down in the following passage from the Rushcliffe Committee's Report :

> " By legal aid we mean assistance in conducting or defending proceedings in the courts, whether by remission of court fees, free legal representation, provision for the payment of witnesses' expenses or otherwise. By legal advice we mean advice on legal matters, drafting of simple documents, and negotiations apart from the conduct of litigation, but we do not include conveyancing or probate matters or the drafting of wills, although certain of these matters have been dealt with in the past under the heading ' legal advice.' "

We shall, therefore, address ourselves first to the question of legal aid and thereafter to the question of legal advice.

(*i*) *True Scope and Extent of Legal Aid.*

49. The costs, charges and expenses to be incurred by a litigant in Court can be conveniently classified into four groups :

(1) Court fees, meaning thereby the institution fee when filing a suit or initiating a proceeding and fees payable to Court in interlocutory proceedings, execution proceedings, etc. ;

(2) Process fees which have to be paid for issuing of summonses, for serving of summonses, orders for receiver, injunction etc. in interlocutory, proceedings, etc. ;

(3) Taxable out of pockets which include the Bhatta charges to the witnesses, charges for obtaining certified copies of documents, charges for typing, etc. ; and

(4) Lawyers' fees which have to be paid to lawyers who represent the litigants in the several proceedings.

50. There are besides these, other costs, charges and expenses also incurred by a litigant consisting of his own travelling expenses to and from the Court premises, the extra travelling expenses and the maintenance expenses which he has got to incur for his witnesses and sundry other expenses which he has to incur over and above those which are included in the taxable out of pockets.

51. The question, therefore, arises what is the true scope of any comprehensive system of legal and, and what charges out of the above should be provided by the State in any scheme of legal aid.

52. There is not the slightest doubt that the court fees and the process fees must be remitted by the State in cases of persons who are certified by the legal aid committees as deserving full legal aid. In those cases where the certificates are for partial legal aid the remission of the court fees and the process fees would have to be made in the same proportion. The same remarks apply also to the taxable out of pockets above described. There is, however, an opinion which says that a litigant should be called upon to provide his own out of pockets in the matter of the Bhatta charges for the witnesses, obtaining certified copies of the documents and the typing charges. It is urged that if these charges were also allowed by the State in the scheme of legal aid, the result would be that the litigant would incur the expenses of bringing a large number of witnesses whose presence may not be absolutely necessary for the purpose of the proceeeding, that he would be applying for certified copies of documents irrespective of the fact whether they are relevant or not, and would pile up typed copies of documents and records which also may be unnecessary for the preparation of a proper brief. It may be observed, however, that the proceedings would after the legal aid certificates are granted by the legal aid committee be in charge of lawyers assigned by the legal aid committee to the assisted persons and these lawyers can be relied upon for the purpose of putting down these costs. As regards the Bhatta charges of the witnesses, these charges would be allowed only for those witnesses who are examined before the Court and it would be only in those cases where the Court certifies that the attendance of witnesses over and above those witnesses who have been examined before the Court was necessary that the charges of such witnesses would be allowed as out of pocket expenses for the purpose of the legal aid. A difficulty would arise, however, in the case of expert witnesses who may have to be called for the purpose of giving evidence in Courts, or tribunals. The expert witnesses cost a good deal and a particular scrutiny would have to be brought to bear upon the summoning of such expert witnesses. As a rule it may be laid down that no lawyer who is assigned by the legal aid committee should summon or requisition the services of any expert witnesses unless he obtains the sanction of the legal aid committee in that behalf. The cost of such witnesses when summoned after the sanction of the legal aid committee would be dealt with in the same manner as the costs of the witnesses above mentioned. In regard to the certified copies of documents from the Record of Rights, Registry, etc., the particular department of the Government would give the certified copies free without charging anything for the same on a certificate in that behalf being produced from the lawyer assigned by the legal aid committee who would exercise his discretion in the matter of the requisition for certified copies of those documents and limit the requisition to such documents as are considered absolutely necessary and relevant for the purposes of the proceeding. As regards the typing charges for preparing a brief, the Court would

remit the typing charges in those cases where the typing work is done in the office itself. In those cases, however, where typing work has got to be done outside the office of the Court and privately for the purpose of preparing the brief, the same should be allowed as out of pocket for the purpose of legal aid again on a certificate in that behalf being produced from the lawyer assigned by the legal aid committee. The costs which would thus have to be incurred in the first instance by the lawyer for the Bhatta charges of the witnesses as also the typing work to be done outside the office of the Court for the purpose of the preparation of the brief would be paid by the lawyer assigned by the legal aid committee out of monies which he would draw in advance from the funds under the control of the legal aid committee and would be accounted for by him at the conclusion of the proceeding to the legal aid committee. The legal aid committee would have the power to question any such expenditure incurred by the lawyer as above and to refuse to sanction it or to sanction a reduced amount, or to ask for a refund in connection with the same from the lawyer assigned.

53. This is the position with regard to the taxable out of pockets in the trial Court. When one goes to the appellate Court, one has got to consider various charges which have got to be incurred therein and they are, again :

(1) the court fees inclusive of the court fee stamps and the charges for issuing notices, etc.

(2) printing charges for judgments and appeal memos,

(3) translation charges,

(4) charges for preparing the appeal paper book,

(5) the lawyer's fees, and

(6) charges for obtaining the certified copy of the judgment and decree.

54. The court fees and the charges for issuing the notices fall in the same category as the court fees and the process fees already dealt with in the trial Court. The judgments and the appeal memos are usually printed in the Government Press and the charges in connection with the same would be remitted in the same manner as the court fee charges and the charges for issuing notices. The translation charges if incurred by sending the documents for translation to the Government translators or interpreters would fall in the same category as above but would have to be provided for in those cases where the translation work is done outside the Court. They would then stand on the same footing as the other charges incurred in the trial Court which would be provided for only on the certificate in that behalf being granted by the lawyer assigned by the legal aid committee. As regards the preparation of the appeal paper book, the charges of the preparation of the same, so far as the district Court has prepared it, would stand on the same footing as the court fee charges and the charges of issuing the notices. It is only in the case of the typing of further documents to be incorpored in the

appeal paper book for the final hearing before the Court that the question would arise as to how far the same should be provided for. They would then be dealt with in the manner following, viz., that for the typing work which is done in the office the charges would fall in the same category as the court fee charges and the charges of issuing notices and for the typing work which is done outside the office, they would be allowed on a certificate in that behalf granted by the lawyer assigned by the legal aid committee. The certified copies of the judgment and decree would always be provided by the office and whatever be the necessary charges for obtaining the same would be dealt with in the same manner as the court fee charges and the charges of issuing notices above mentioned. The same remarks would apply to the additional typing work which may have to be done in the matter of a cross-appeal filed by the respondent. They would be dealt with in the same manner as the costs incurred in the preparation of the appeal paper book.

55. This would be the position also in the matter of the civil revision applications and the criminal revision applications as also second appeals which come within the purview of the legal aid. As regards the criminal Courts, whatever be the court fees, the process fees and the charges for obtaining the necessary copies of the relevant documents or the notes of evidence in those cases where the presiding Magistrate or Judge allows the same to be given to the accused they would be dealt with in the same manner as above stated. This leaves the question of the lawyers' fees as within the true scope of the legal aid. The lawyers' fees which may have to be paid having regard to the provisions in that behalf which we shall discuss hereafter would also be included as a necessary payment in the scheme of legal aid and would have to be paid fully in the case of a fully assisted person and partially in the case of a partially assisted person.

56. With the safeguards as above prescribed by us, we may safely lay it down that the Court fees and the process fees, the taxable out of pockets and the lawyers' fees in the manner abovementioned should form part of the comprehensive system of legal aid and should be provided for in the manner above mentioned by the State.

(ii) Classes of persons to be aided.

57. The terms of reference to the Committee refer to poor persons, persons of limited means and persons belonging to Backward Classes as the persons the question of granting legal aid to whom has got to be considered by us. We have no doubt that those persons who would come under the category of poor persons would have to be given full legal aid and persons of limited means would have to be given legal aid in proportion to their means. The only question which has to be considered in this context is how far the persons belonging to the Backward Classes can be treated separately apart from their being poor persons or persons of limited means. Persons belonging to Backward Classes have been divided into three main groups. The first group consists of Scheduled Classes and includes communities such as Bhangis, Chambhars, Garodas,

Mahars, Mangs and others. The second group consists of scheduled tribes which are otherwise known as the Aboriginals and Hill Tribes, such as the Bhils in Khandesh, Dangs and Panch Mahals, the Warlis, Katkaris and Thakurs in Thana District or the Dublas and Choudharas in Surat District. The third group consists of other Backward Classes and includes communities like the Charans, Garudis, Kharvas or the Vanjaris. They are edueationally backward. The backward tracts as specified in the Ad Hock Committee's Report are the following :—

(*i*) Districts of Surat, Thana, West Khandesh and Kolaba.

(*ii*) Panch Mahals Sub-division (now Panch Mahals District).

(*iii*) Part of Nasik District—Baglan, Chandor, Dindori, Igatpuri, Kalwan, Malegaon and Nandgaon Talukas and Peint Mahal only.

(*iv*) Part of Poona District—Junnar Taluka and Ambegaon Peta only.

(*v*) Part of Ahmednagar District—Akola Taluka only.

(*vi*) Part of East Khandesh District—Amalner, Bhadgaon, Erandol and Parola Talukas; Chopda, Raver and Yaval Talukas and Edlabad Petha only.

(*vii*) Districts of Ratnagiri and Karwar to some extent due to their large Backward Class population.

58. By reason of the persons belonging to Backward Classes being separately described in the terms of referenee apart from the poor persons and persons of limited means, a doubt was created in the minds of several persons to whom we had addressed the questionnaire whether Government intended that the persons of Backward Classes were entitled to the benefit of legal aid irrespeetive of their means or financial condition and several persons who answered the questionnaire emphatieally expressed their opinion that the persons belonging to Backward Classes should not be granted legal aid merely because they belonged to the Backward Classes, but should be granted legal aid provided they satisfied in the first instance the means test which would be prescribed for poor persons as well as persons of limited means. A sentiment has been expressed against a distinction based upon a class or status which has been considered as irrelevant and unnecessary and worth eliminating altogether while evolving a scheme of legal aid whether financed wholly or in part by the State. It has been urged that the only test which should be uniformly applied is whether a person concerned is or is not possessed of adequate means to seek redress in a Court of law. There is considerable force in this argument. Even amongst the persons belonging to Backward Classes there are in urban areas a number of industrial labourers or skilled workers whose average monthly earnings as factory labourers or skilled artisans including their basic pay, dearness allowance and bonus, etc., equal if not exceed those of a graduate clerk or a member of an advaneed community working in one of the countless offices in the cities. Similarly the Mochis or Kharvas of Surat District have, in various instances, by the exercise of their trade at home or abroad, amassed considerable fortunes. Nevertheless we feel that a large number of

persons belonging to Backward Classes, almost 90 to 95 per cent. thereof, are illiterate and are financially on a very low scale ; and they are, by reason of their extreme poverty, backwardness and illiteracy entitled to special privileges, protection and treatment. To quote a passage from the Report of the Committee on Educational Expansion in Adivasi Areas in Thana District :—

> " Theirs is a life of utter squalor and privation. They have been treated inhumanly practically as slaves by the classes that exploited them and feed them. They cannot count figures beyond 20 and cannot understand even the simplest of money transactions."

In the evidence given before us by Mr. M. N. Heble, Backward Class Officer, he pointed out to us that so great was the extent of their illiteracy and ignorance that if they received a summons from a civil Court in a money suit, they went to the very Sahukar who was responsible for the service of the summons and sought his advice, with the result that the Sahukar misguided them and they remained absent from Court and *ex parte* decrees were passed against them. It has been particularly impressed upon us by Mr. L. M. Shrikant, a Member of the Committee who has been working amongst the persons belonging to the Backward Classes that the measures which have been taken so far by Government for their welfare and uplift have not been quite adequate. They have only extended to the general welfare schemes which the Backward Class Officers and the District Welfare Officers touring in the districts and the taluka areas have been able to bring to their homes. The work, which the Backward Class Officers and the District Welfare Officers have been doing so far amongst the persons belonging to the Backward Classes, has, according to the evidence of Mr. M. N. Heble, not been sufficient to raise their social and economic level. There are no doubt, apart from these Backward Class Officers and District Welfare Officers appointed by the Government, unofficial agencies working for their uplift, e.g., the Bhil Seva Mandal of Dohad, Adivasi Seva Mandal of Thana and the Dang Seva Mandal of Nasik. Whatever legal aid may be rendered in the course of their multifarious activities by these official as well as non-official agencies, is not sufficient to meet the problem of legal aid which the persons belonging to Backward Classes are in particular need of. No doubt, so far as any scheme of legal aid is concerned, they would be 90 or 95 per cent. of them, if not more, falling within the category of poor persons, and it has, therefore, been suggested that in their cases a presumption should be drawn in their favour that they do deserve legal aid, which presumption would, of course, be liable to be rebutted by tangible evidence or otherwise proving that the particular individual belonging to the Backward Classes was such as did not fall within the category of a poor person or even a person of limited means. The litigation which the persons belonging to the Backward Classes are involved in, does not involve any questions as regards title to immoveable properties. They are mostly landless agricultural labourers apart from their being as stated before industrial labourers or skilled workers in the urban areas and it would be safe to adopt this

presumption in their favour so as to avoid all unnecessary inquiry into their means every time that an application is made by a person belonging to the Backward Classes for legal aid. Most of their litigation would certainly be covered by the Bombay Agricultural Debtors' Relief Act, 1947, the Bombay Tenancy and Agricultural Lands Act, 1948, and the Bombay Money Lenders Act, 1946.

59. We have noted in the earlier part of our Report, the provisions which have been made by various Government Resolutions for giving legal aid to persons belonging to the Backward Classes by creating posts of Debt Relief Assistants in the matter of granting legal assistance to the members of the Aboriginal and Hill Tribes. These provisions also do not cover all the proceedings in which the persons belonging to Backward Classes would be involved. They touch only the proceedings which are covered by the Bombay Agricultural Debtors' Relief Act, 1947, and the Bombay Tenancy and Agricultural Lands Act, 1948. But the other types of litigation in which some of these persons belonging to the Backward Classes may be concerned and the proceedings which may crop up against them in criminal Courts are not at all touched by these provisions. It is, therefore, necessary that legal aid should be provided for the persons belonging to the Backward Classes. They should, however, in our opinion, be treated on a par with the poor persons and persons of limited means except for the presumption which may be raised in their favour that they *prima facie* deserve all legal aid, which presumption may be rebutted by tangible evidence or otherwise in which case the Legal Aid Committee, before which their applications for legal aid come for disposal, would be justified in refusing the grant of legal aid certificates to them. Except in these exceptional cases, we are of opinion that the persons belonging to the Backward Classes should, as a rule, by reason of the working of that presumption, be granted certificates of legal aid.

60. We would, also in the case of the persons belonging to Backward Classes, make one further concession and it is in regard to the mode in which the means test may be satisfied by them. The persons belonging to Backward Classes should be deemed to satisfy the means test required by the Legal Aid Committees provided they produce before the Legal Aid Committees certificates of their financial means from the Assistant or the Deputy Collector or the Assistant Backward Class Officer or the Prant Officer having jurisdiction over the areas where they reside and no more proof of their poverty or being persons of limited means should be asked for by the Legal Aid Committees beyond such certificates. As regards the rest of the considerations and the tests to be applied before the legal aid certificates are granted by the Legal Aid Committees to them, they should fall in line with the general class of poor persons and persons of limited means. The *modus operandi* in the matter of the grant of legal aid certificates and the work to be done for them by the Legal Aid Committees and the lawyers to be assigned to them would be the same as in the case of poor persons and persons of limited means and would not be of any different or special character.

61. There is also another suggestion which has been made before us in regard to the legal aid to be granted to these persons of Backward Classes and it is this. There are provisions already made by the Government for the grant of legal assistance to the members of the Aboriginal and Hill Tribes and it is considered that if full-time employees with legal knowledge and experienee were employed for serving the needs of the members of those classes, they would be better able to serve them than lawyers who may be assigned to individual eases by Legal Aid Committees who grant legal aid certificates to them. There is eonsiderable foree in this suggestion and we are of opinion that where the volume of work warrants the same, Government should employ a full-time worker who has legal knowledge and experienee to grant legal adviee as well as legal aid to the members of these Aboriginal and Hill Tribes. If, however, there is not enough work to cmploy a full-time worker in this manner, then the only way in which the legal aid ean be given to these members of the Aboriginal and Hill Tribes would be by giving them legal aid in the manner in which it would be given to other poor persons and persons of limited means.

62. As regards the persons belonging to Backward Classes who belong to the Scheduled Classes and other Backward Classes apart from Aboriginal and Hill Tribes, the position is that they are not located in any particular areas in such clusters as would justify the appointment of a full-time worker to help them in the matter of legal advicc and legal aid. They are interspersed in various districts along with the persons belonging to the advanced communities and in their case, the only way in which provision could be made for granting them the legal aid would be by asking them to apply to the Legal Aid Committees who would after taking into account the various considerations which we have urged above, grant them legal aid certificates and make the necessary arrangements for granting them legal aid. These provisions would also apply to the members of the Aboriginal and Hill Tribes in areas where it is not possible for the Government to employ a full-timc worker to give them legal advice and legal aid.

63. We may as well, while we are on this topie of the elass of persons to be aided, observe that legal aid should be given in proper cases not only to the plaintiffs or petitioners or complainants but also to the defendants, respondents or the accused appearing before the eivil and criminal Courts and also to the various petitioners or respondents appearing before the various Tribunals whieh we shall eonsider hereafter.

(iii) The Tests to be applied before Legal Aid is granted.

64. There are two main tests which have got to be applied before a legal aid certificate should be granted by the Legal Aid Committee, viz.:—

(1) the means test, and

(2) the *prima facie* case test.

(1) The Means Test.

65. As regards the means test to be satisfied, a considerable controversy has raged in regard to what is the limit of income or capital which a person should be possessed of before he can be granted legal aid at the expense of the State. An opinion has been expressed in certain quarters that the State should give free legal aid to every citizen of the State irrespective of whatever be his income or capital. It is considered by those who support this theory that the administration of justice is one of the functions which the state performs for the benefit of all its citizens The State taxes the subjects and the State should, therefore, administer justice to all its subjects without charging a single pie for the same. They say that charging litigants court-fees, process fees, etc. is tantamount to selling justice which is the last thing the State should do particularly having regard to the quotation from Magna Carta noted in the beginning of this Report that "To no one will we sell, to no one will we refuse or delay, right or justice." In support of this argument a reference is also made to the principles according to which justice was dispensed in ancient India by the Kings. They administered justice as one of the divine functions which they performed and no charge was levied on the litigant for such dispensing of justice. This is no doubt a very great ideal and if the State could do it it would be all the way welcome. We cannot, however, concieve of any State in the modern times dispensing justice in this manner having regard to the various commitments of its and having regard to the fact that the subject of administration of justice is inextricably mixed up with the maintenance of Courts, Judges, Judicial Officers and all the paraphernalia of the administration of justice which necessarily costs some considerable amount to the State. No doubt, the State would not be justified in making money out of the administration of justice so as to wipe out even to a small extent the deficit in other branches of its activities. Then it would not be dispensing justice, charging to the litigant only that much sum which would be required for maintaining the whole machinery for dispensing the same, but it would to some extent involve the infringement of the fundamental maxim contained in the Magna Carta :—"To no one shall we sell justice." We need not, however, discuss this aspect of the question any further. We have to take it for granted that court-fees, process fees, etc. will be charged by the State to the litigants and, therefore, we have got to consider how far the legal aid in this behalf should be granted by the State, apart from the representation of the litigants by lawyers in the Courts or in the Tribunals concerned. For that purpose we have to lay down a standard of income and capital the enjoyment of which would be the consideration by the Legal Aid Committees for the purpose of determining whether the applicants should be classified as poor persons or as persons of limited means so as to deserve full or partial legal aid respectively or should be classified as persons to whom no legal aid whatever should be granted.

66. There has been a difference of opinion even with regard to who should be considered to be poor persons deserving full legal aid. There

are diverse types of litigations which have got to be undertaken or defended by litigants. The amounts involved in those cases may be small or big. They may be simple cases or they may involve intricate questions of law and accordingly lawyers of a particular calibre may have to be employed to represent the litigants in those cases. In different venues different types of costs may have to be incurred. There are no court-fees of any particular magnitude in criminal Courts. The Court-fees etc. in Administrative Tribunals are also not of any particular magnitude. The court-fees, etc. in cases of smaller denominations may not be such as would be deterrent to persons of moderate means. In cases of higher denominations and in cases which are litigated before the High Court of Judicature at Bombay however there would be instances where considerable costs would have to be incurred by the litigants not only for prosecuting the litigation but also for defending the same. In criminal Courts also, a large amount of costs may have to be incurred by the accused in defending themselves in Sessions Cases and in cases before the Appeal Court as also in the Presidency Magistrates' Courts where intricate points of law may be involved. The means of a person or even the capital which he possesses may not be commensurate with or may form a very very negligible or a small part of the expenses which he would have to incur in financing the litigation of the type above-mentioned and it has, therefore, been suggested that no particular limit of income or capital should be fixed but the poverty or the limited means of a person seeking legal aid should be considered in relation to the amount of expenditure which he would be expected to undergo in the matter of the litigation in which he is involved. It has been therefore suggested that each case should be dealt with on its own merits whatever be the income or the capital possessed by the applicant for legal aid, and the Legal Aid Committee should determine the question of the issue of a legal aid certificate to the applicant having regard to all these circumstances. One of the witnesses before us adopted the definition which obtains in Italy of a poor person, namely, a person who is unable to bear the expenses of the cause of action. Mr. Justice J. C. Shah also deposed before us that the capacity of the litigant to bear the burden of the litigation expenses should be the criterion and the income of the litigant taken in conjunction with his other assets should be a test of his capacity to bear the same. Mr. D. H. Nanavati, Solicitor to the Government of India, also in his answer to the questionnaire stated that the capacity to bear the burden of the expenses of the particular litigation should be the criterion in the matter of the granting of legal aid. These are no doubt ideal considerations. We have, however, got to consider this question from a practical point of view. We are contemplating forming the Legal Aid Committees not only in Greater Bombay but also in the district towns and in taluka towns where the Courts of law are situated, and we do not think that it would be fair to the members of the various Legal Aid Committees thus established to leave to their discretion the question of the grant of legal aid certificates in this manner. It would therefore be within the realm of practical politics to lay down certain rules with regard to

the limits of income or capital to be possessed by an applicant for legal aid, leaving it however to the discretion of the respective Legal Aid Committees in proper and deserving cases whether within or without those limits of income or capital to grant legal aid to the applicant if they, in the exercise of their discretion, thought fit to do so.

67. Even in the case of income or capital possessed by an applicant for legal aid we have got to take into account the fact that what would be the ostensible or gross income or capital would not be a fair test, for the simple reason that there are certain inevitable overhead charges or payments which have to be deducted therefrom before arriving at what we may call the disposable income or the disposable capital of the applicant. In the case of income there may be contributions which have to be compulsorily made by a person towards Provident Fund, Insurance, etc. In the case of capital also, tools of trade, household furniture, ornaments of the women folk and various other things may have to be deducted before one can arrive at the capital which should be drawn upon for the purpose of providing the expenses of litigation. We are, therefore, of the opinion that what should be taken into consideration in this means test to be applied by the Legal Aid Committees should be the disposable income and the disposable capital of the applicant for legal aid.

68. In arriving at the disposable income, the following deductions should be made from the gross income of the applicant, namely :—

(1) interest which is being paid by the applicant on his debts, if any ;

(2) premium which is being paid by the applicant on his life insurance policy, if any ; and

(3) the compulsory contribution which the applicant is making for Provident Fund, compulsory insurance and such other schemes of social security.

There will, however, be a proviso added to this that the help which the applicant is reasonably expected to receive from any body of which he is a member towards meeting his expenses in connection with the proposed litigation should be added on to his disposable income. The disposable income of an applicant who applies as a legal representative of a deceased person shall be such income of the estate left by the deceased person and the disposable income of the applicant who applies as a trustee shall be the net income of the properties of which he is a trustee.

69. In arriving at the disposable capital of the applicant the following deductions shall be made :—

(1) the family house ;

(2) the necessary wearing apparel, cooking vessels, beds and bedding of the applicant, his wife and children ;

(3) tools of artisans and where the applicant is an agriculturist, his implements of husbandry and such cattle and such grain as may be necessary to enable him to earn his livelihood, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability;

(4) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925, for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(5) all agricultural lands belonging to the applicant;

(6) running business and stock-in-trade of the applicant;

(7) outstandings written off as bad debts;

(8) ornaments of the women folk and the children; and

(9) the subject-matter of the claim.

The above will be subject to the following proviso, viz. :—

(1) that the value of any property disposed of by the applicant within 2 months from the date of the application in order to enable him to apply for legal aid shall be taken into account for arriving at the disposable capital;

(2) no aid shall be given to an applicant where it appears that he has entered into any agreement with reference to the subject-matter of the proposed proceeding under which any other person has obtained an interest in such subject-matter; and

(3) no legal aid shall be given to a company registered under the Indian Companies Act or a Society registered under the Societies Registration Act.

70. After having arrived at the disposable income and the disposable capital of the applicant for the legal aid we have also to consider the difference in the price levels obtaining in Greater Bombay, Industrial Cities like Ahmedabad, Poona and Sholapur and the mofussil areas. The standard of living differs in these different areas and so do the price levels and the general cost of living.

71. In arriving at the figures of the disposable income and the disposable capital the possession of which would entitle an applicant for legal aid to full legal aid or partial legal aid respectively we have adopted as our basis a family unit which according to the standard laid down in the Textile Inquiry Committee's Report and also in the Report of the Committee appointed by the Central Government for fair wages, consists of a man, wife and two children, otherwise described as 3·4. This is the unit which we have adopted and the limits of the disposable income and the disposable capital which we have laid down below are with reference to the disposable income and the disposable capital of that family unit.

72. There were various suggestions made as regards the fixing of the limits of disposable income or disposable capital under which the applicant for legal aid should be held entitled to full legal aid ; and it was suggested having regard to the high prices of commodities, scarcity of housing accommodation, etc., which prevails in Greater Bombay, and the manner in which the members of the middle class are ground down therein that a disposable income of at least Rs. 150 in Bombay should be laid down as the limit of disposable income within which a person should be deemed entitled to full legal aid. A similar level of a disposable income was suggested for the mofussil areas, though it was less than that suggested for Greater Bombay, having regard to the fact that the inflation of prices and the high cost of living have also permeated the mofussil areas much to the disadvantage of the population thereof. The limit of disposable capital also was accordingly suggested as about Rs. 3,000 in Greater Bombay and Rs. 1500 to Rs. 2,000 in the mofussil areas if not more. We do appreciate that the working classes are a bit better off than the middle classes in so far as apart from the dearness allowance and bonuses which they get, there are also in their families a large number of members who work along with the head of the family and add to the earnings of the unit. The artisans also have been earning daily wages which are more than 200 to 300 per cent. above what was the pre-war level of wages and are today financially much better off than they were before. The difficulty is, however, particularly felt by the middle class families where the wage earner is only one, the dependents are many and the salaries which they earn by serving in the offices, Banks and the various establishments are not much in comparison with the earnings of the other members of the community described above. It would be, therefore, worthwhile laying down a higher limit as suggested by the several witnesses before us, viz., Rs. 150 per month at least in Greater Bombay and relative amounts in the mofussil areas, below which an applicant for legal aid should be deemed entitled to full legal aid.

73. As against this, we were confronted with a heavy caution against involving the State into a huge expenditure by way of financing the scheme for legal aid. Certain statistics were put before us by the representatives of the Government who were members of the Committee, the Secretary of the Legal Department and the Secretary of the Finance Department. Statistics were also placed before us by Mr. L. C. GANDHI, a member of the Committee, taken from the Report on the Administration of Civil and Criminal Justice in the Province of Bombay for the year 1946. We have anxiously considered these statistics as also the various suggestions which have been made by the witnesses who appeared before us and also in the answers to the questionnaire which we received and we have come to the conclusion that as a matter of practical politics and so as not to involve the State in a very great expenditure in sponsoring the scheme of legal aid as suggested by us, the limits of disposable income and disposable capital should be put as low as possible, and the enjoyment of income or capital within those limits should entitle an applicant for legal aid to a certificate of

full legal aid. In recommending these low limits of disposable income and disposable capital, however, we may not be understood to suggest that persons who enjoy disposable incomes and disposable capital above those limits which we have thus prescribed are not such as deserve to fall in the category of poor persons deserving full legal aid. Many persons having disposable incomes and disposable capital beyond those limits would no doubt find it difficult to finance the litigation in which they may be involved ; but we recommend this measure for the present as a matter of practical politics for the State to start with, to see whether the expenditure involved in that scheme is such as it would initially bear as a part of its social service activities and after having an experience of the working of the scheme of legal aid on that basis. expand the scope of its scheme of legal aid still further by raising those limits which we have thus determined as the starting point. We also recommend that for persons enjoying disposable incomes and disposable capital beyond these limits which we have thus laid down as entitling an applicant for legal aid to a certificate of full legal aid, certain limits should be laid down which would entitle the applicants for legal aid to certificates of proportionate legal aid, viz., 3/4ths, 1/2 and 1/4th. We further recommend that beyond the particular limits of disposable incomes and disposable capital which we have prescribed, no legal aid whatever should be given at the expense of the State. The persons enjoying disposable income and disposable capital beyond those limits should not be granted any certificate for legal aid at all.

74. The limits of disposable income and disposable capital above referred to are as under :

Disposable Income.

	Greater Bombay.	Industrial towns, Ahmedabad, Poona and Sholapur.	Mofussil areas.
	Rs.	Rs.	Rs.
Full legal aid	90/— per mensem.	75/— per mensem.	60/— per mensem.
Partial legal aid.—			
3/4ths	115/— per mensem.	95/— per mensem.	80/— per mensem.
1/2	135/— per mensem.	115/— per mensem.	95/— per mensem.
1/4th	155/— per mensem.	135/— per mensem.	110/— per mensem.
No legal aid	175/— per mensem and above.	150/— per mensem and above.	125/— per mensem and above.

Disposable Capital.

	Greater Bombay.	Industrial towns, Ahmedabad, Poona and Sholapur.	Mofussil Area.
	Rs.	Rs	Rs.
Full legal aid	750/—	600/—	500/—
Partial legal aid			
3/4ths	1,250/—	1,100/—	800/—
1/2	1,700/—	1,350/—	1,050/—
1/4th	2,150/—	1,600/—	1,300/—
No legal aid	2,500/—	1,800/—	1,500/—

75. As regards the persons who are granted full legal aid, there would be no question of any contribution to be made by them towards the legal aid expenses. But as regards the persons who are granted partial legal aid as above, the question would arise as to how they are to make their contributions towards the legal aid expenses involved in the litigation. Those persons would have to contribute towards the legal aid expenses to the extent of the excess over the partial legal aid thus granted to them ; i.e., a person who is granted 3/4ths legal aid would contribute one quarter of the expenses of the litigation ; a person who has been granted half legal aid would contribute half of the expenses of the litigation and a person who is granted 1/4th legal aid would contribute three-fourths of the expenses of the litigation. An estimate of the whole of the legal expenses involved in the litigation would be made in the first instance by the Legal Aid Committee who would grant legal aid certificate ; and the applicant for legal aid who is given such partial legal aid would be liable to contribute in the proportion mentioned above towards these estimated legal expenses by such instalments and in such manner as may be determined by the Legal Aid Committee having regard to the disposable income and the disposable capital enjoyed by the applicant for legal aid. So far as the disposable income is concerned, he would contribute towards the above expenses which he would be liable for, one-half of the excess over Rs. 60 or Rs. 75 or Rs. 90 per mensem as the case may be every month until he makes up the amount of his contribution determined as above. In the case of disposable capital he should pay over to the Legal Aid Committee such part thereof as exceeds the disposable capital of Rs. 500, Rs. 600 or Rs. 750 respectively at once or in such manner as may be determined by the Legal Aid Committee having regard to the circumstances and the nature of such disposable capital. An account of the legal expenses incurred in the particular litigation would be made up by the Legal Aid Committee at the conclusion of the proceeding and

if it is found that the applicant for legal aid to whom the requisite legal aid certificate was granted has contributed anything more than what he was liable to contribute on the basis aforesaid the Legal Aid Committee would refund to him the excess over and above the amount which ought to have been contributed.

76. We have provided in the later part of the Report that the costs recovered by the Legal Aid Committee or the relevant Organisation from the unsuccessful opponent would also go towards reimbursing the cost which has been incurred by the Legal Aid Committee in seeing the litigation of the assisted person through. In the event of any such cost being recovered from the unsuccessful opponent or otherwise, the Legal Aid Committee would take that also into account in the accounts as between itself and the applicant who has been granted legal aid certificate and would also refund any amount which may happen to be in excess of the actual amount of legal expenses which the applicant for legal aid should have contributed towards the legal aid expenses, taking an account also of the actual amount of contribution which he has made at all relevant times.

77. We may add in passing that in the case of joint families, the family unit which we have indicated above would be the unit composed of the respective heads of the branches of the joint family and their wives and children and in the event of the income of the whole of the joint family being thrown into the joint stock, a rough estimate would have to be made by the Legal Aid committee of the income of the particular family unit before arriving at a decision of the disposable income enjoyed by that particular unit. The same remarks would also obtain with regard to the disposable capital enjoyed by the particular unit where an application for legal aid is made before the Legal Aid Committee by it.

78. We may add that while determining the amount of contribution which the applicant for legal aid should make towards the legal aid expenses to be incurred in his litigation, the Legal Aid committee would take into account in proper cases not only the disposable income of the individual but also the disposable capital enjoyed by him. Where the applicant for legal aid enjoys both disposable income and disposable capital, both these items would be taken together and the amount of legal aid whether full or partial would be arrived at on the basis of a combination of both ; and in those cases where the disposable income or the disposable capital taken separately would possibly have entitled the applicant for legal aid to partial legal aid, the disposable income and the disposable capital taken collectively together would be taken by the Legal Aid committee as disentitling him to even partial aid in accordance with the circumstances obtaining. We may further add that while prescribing these limits of disposable income and disposable capital we do not intend to deprive the Legal Aid Committees concerned of the discretion which we intend they should be invested with of either granting or refusing legal aid in proper cases and in special circumstances where the particular circumstances of the case e.g. holding

of considerable agricultural lands or the like may warrant them in doing so in spite of the above test as regards the disposable income and disposable capital being *prima facie* satisfied by the applicant for legal aid.

(2) Prima Facie Case Test.

79. Apart from the means test which we have discussed above, the other test to be satisfied by the applicant for the legal aid would be what has been compendiously described by us above as the *prima facie* case test. Order XXXIII, rule 5, of the Code of Civil Procedure provides that before a pauper application can be considered, the allegations must show a cause of action. If the allegations contained in the petition did not show a cause of action, it would be rejected by the Court. Order XLIV of the Code of Civil Procedure which deals with pauper appeals provides that the Court shall reject the application of the party intending to appeal in *forma pauperis* unless upon a perusal of the application and of the judgment and decree appealed from the Court sees reason to think that the decree is contrary to law or some usage having the force of law, or is otherwise erroneous or unjust. These are the two provisions to be found in the Code of Civil Procedure with regard to what may be compendiously described as the *prima facie* case test before an application to sue or to file an appeal in *forma pauperis* can be considered by the Court. We are of the opinion that the first provision is quite insufficient and the second provision is very stringent. For the purpose of determining whether the legal aid should be granted the Legal Aid Committee should not be guided only by the consideration whether the allegations disclose a cause of action. It would depend upon the ingenuity of the draftsman or the honesty of the applicant whether proper allegations would be set out in the application to initiate the proceeding so as to constitute a cause of action. The grant of the legal aid certificate should not be made dependant upon that circumstance. The legal aid is to be granted at the expense of the State to a large extent. The whole machinery of the grant of legal aid is to be operated upon for the benefit of the applicant who is granted the legal aid certificate and it stands to reason that before any legal aid certificate is granted by the Legal Aid Committee, it should require that a *prima facie* case should be made out by the applicant either for prosecution of his claim or for the defence which he puts forward. It is only when a *prima facie* case is thus made out by him that the Legal Aid Committee should grant him the legal aid certificate. In the case of the appeals, however, the test which has been laid down in Order XLIV rule 1 of the Code of Civil Procedure is, as we have observed above, very stringent. It would require the applicant to satisfy the Legal Aid Committee that there is reason to think that the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust. We feel that in place of that stringent provision there should be a provision of this nature, viz., that on a perusal of the judgment and the decree which is sought to be appealed from, the Legal Aid Committee should consider

that there is an arguable case for the appellant. If it comes to the conclusion that there is an arguable case, the applicant should by all means be given the legal aid certificate provided of course he satisfies the other tests laid down by the Committee, i.e., the means test etc.

80. As regards Civil Revision Applications, the Legal Aid Committee should consider the judgment or the order against which the application is sought to be filed and should not as a rule grant a legal aid certificate unless it thinks that real justice requires it to be done and legal aid is required to be granted to the applicant. As regards the Second Appeals, they would necessarily be governed by the provisions of section 100 of the Code of Civil Procedure and all the requirements of that section would have to be satisfied. They would be scrutinised in that manner by the Legal Aid Committee and a certificate would be granted only if the Legal Aid Committee comes to the conclusion that the appeal is such as should be sponsored by it. These are the tests of a *prima facie* character so far as the civil litigation is concerned.

81. When we come to the criminal litigation a test different from this *prima facie* case test would have to be adopted by the Legal Aid Committee before it grants a legal aid certificate either for the prosecution or for the defence. The prosecution would only be in the case of non-cognizable offences and the defence would be of course in regard to all the offences except those excepted from the purview of legal aid as stated in the later part of this Report. In both these cases, the applicant for legal aid would have to satisfy the Legal Aid Committee that it is desirable in the interest of justice that the applicant should be granted legal aid. It is difficult in this case to lay down the test of a *prima facie* case for the simple reason that in the case of criminal trials and more so in the case of the defences it would be very difficult for the applicant to produce before the Legal Aid Committee with safety to himself and without proper investigation into the facts of his case, evidence as regards the *prima facie* character of his attack or defence. The cardinal principles of criminal jurisprudence, viz., the presumption of innocence, the burden of proof lying on the prosecution to bring home the guilt to the accused and the benefit of reasonable doubt to be given to the accused etc. would make the appreciation of the *prima facie* character of the defence a very difficult proposition. It is, therefore, worthwhile giving discretion to the Legal Aid Committees in the matter of granting legal aid certificates in criminal matters in the manner suggested viz., that the Legal Aid Committee should think it desirable in the interest of justice that the particular applicant before it for legal aid in criminal matters should be granted legal aid as applied for. We think that if this is the test laid down in criminal matters it would serve the purpose of the scheme. It would ward off those persons who merely indulge in litigation for its own sake or for harassing or blackmailing the opponents. All frivolous and vexatious prosecutions or defences would thus be ruled out.

82. In the case of Criminal Revision Applications which savour of the character of appeals also the Legal Aid Committee would consider this aspect of the case, viz., whether it is desirable in the interest of justice that the applicant should be granted legal aid. It would

be only in those Criminal Revision Applications which are not of the nature of appeals that the Legal Aid Committee as in the case of other Revision Applications would consider whether the grant of the legal aid certificate would be required in order that real justice be done to the parties.

83. The above recommendations of ours are, of course, without prejudice to and not superseding the provisions which are already existing in the matter of the grant of legal aid to persons accused of capital offences in the several cases which we have mentioned before and in the case of jail petitions which are admitted by the High Court and where no Advocate is employed by the appellant. We might however add that these cases should be included in the list of six free cases to be worked up by all lawyers without remuneration every year, as hereinafter stated.

84. We may add that in determining whether an applicant for legal aid should be granted a legal aid certificate, wherever there is a doubt whether the applicant's means are sufficient to enable him to obtain the legal aid or whether he has made out a *prima facie* case or whether it is desirable in the interest of justice that he should be granted legal aid, the doubt should be resolved in favour of granting him the legal aid. The applicant should always have the benefit of that doubt given to him.

Other Tests.

85. Apart from these tests, viz., the means test and what may be compendiously described as the *prima facie* case test, there are some other tests which have also been suggested and which should be taken into consideration by the Legal Aid Committees before granting the applicants legal aid certificates. The litigants are some times so minded as to carry into Court litigation in regard to trivial matters or matters which no sane man would think of bringing before the Courts. There are for instance owners of immoveable properties, who, though it would really be in very rare cases that they would be coming within the jurisdiction of the Legal Aid Committee for the grant of legal aid certificates, carry into Court disputes regarding the encroachments of half a foot or one foot of their properties. They would carry into Court the litigation with regard to minor infringements of easements which no sane person would ever think of complaining about. These are cases which the Court could not summarily dispose of or dismiss on the application of the doctrine *De minimis non curat lex*. Such type of litigation would always have to be dealt with by the Courts. This would be in the nature of harassing and frivolous litigation or litigation in which there is no real substance. We think that in such cases the Legal Aid Committees while considering the tests required to be satisfied before a legal aid certificate is granted would be justified in refusing to grant legal aid certificates to the applicant. There are also cases where the defendant is in such pecuniary straits or down and out financial position that it would not be considered worthwhile

sponsoring any litigation at all. The plaintiff, if he has finances of his own, might if his suit is about to be time-barred, initiate such litigation in Court. Even though he knows that the defendant is not worth anything, he might choose to obtain a decree so that within the period of limitation for the execution of the decree he might take the chance of the defendant coming into some money and his realising something out of the decree. We think however that when the legal aid is granted at the expense of the State to a large extent and the whole machinery of legal aid is to be set into operation for the benefit of the parties, such litigants should not be given legal aid and the legal aid certificates should not be granted in those cases where the chances of recovering anything from the defendant are remote or the defendant is admittedly in impecunious circumstances or on the brink of insolvency.

86. The test which should therefore be applied by the Legal Aid Committee before granting the legal aid certificate to an applicant apart from the means test and what is compendiously described as the *prima facie* case test should be whether having regard to all the circumstances of the case, the litigation is such as requires sponsoring by the Legal Aid Committee. These are the tests which should be applied by the Legal Aid Committee before granting to an applicant before it a legal aid certificate entitling him either to full legal aid or partial legal aid.

(iv) Safeguards against abuse.

87. We have already observed earlier that according to some the scheme for legal aid should not be sponsored by the Government because it would be liable to be abused and people would take undue advantage of the provision made by the Government for the grant of legal aid to poor persons and persons of limited means. It is urged that it would encourage vexatious or frivolous or unreasonable proceedings in which costs would be likely to be out of all proportion to the amounts of the claims. We have in the course of the discussion of this aspect of the matter indicated as to what would be the safeguards against the abuse of the provisions for legal aid. Those safeguards are inherent in the scheme itself, viz., that the application of the Applicant for legal aid would be scrutinised by the Legal Aid Committee which would be composed of persons who are mainly lawyers and some social workers in the centres. The means test which has been laid down and more so the *prima facie* case test which would be required to be satisfied by the applicant before the legal aid certificate is granted to him would also act as salutary checks against the abuse of these provisions. We have recommended that the Legal Aid Committees should be invested with wide discretion in the matter of the grant or refusal of legal aid certificates even though the applicants might *prima facie* satisfy the above tests. That would have the effect of discouraging vexatious, frivolous or unreasonable proceedings or proceedings in which costs would be likely to be out of

all proportion to the amounts of the claims. We feel that these safeguards are enough. Further safeguards, however, have been suggested and they are, in our opinion, such as would really prevent the abuse of the provisions for legal aid. These further safeguards can be enumerated as under :

(1) An applicant at the time of submitting his application for legal aid to the Legal Aid Committee should make a declaration of his means. He should fill in a form in duplicate a statement showing the extent of his disposable income or disposable capital, which is one of the things to be scrutinised by the Legal Aid Committee before the grant of the Legal aid certificate to him. This statement should be sworn or solemnly affirmed by him before the Secretary of the Legal Aid Committee who should be invested with the power to administer oaths for the purpose. The Secretary of the Legal Aid Committee should be declared to be a Public Officer for the purpose of attracting the operations of relevant sections of the Indian Penal Code which deal with offences in connection with making false declarations on oath before Public Officers. In the event of the applicant making any false declaration in this behalf, he would be liable to be hauled up before the criminal Courts and dealt with in accordance with law.

(2) An application which he thus makes to the Legal Aid Committee should be accompanied by certificates as regards his means given to him by respectable citizens or responsible officers of the State and they would also be an additional safeguard against the abuse of the provisions for legal aid.

(3) A bond should be taken from the applicant stipulating that he would :

(*a*) diligently pursue the legal remedies,

(*b*) produce all material evidence in his possession or under his control,

(*c*) not enter into any champertous transaction regarding the property in dispute, and

(*d*) not enter into any compromise except with the consent of the Legal Aid Committee or permission of the Court.

In both the above cases (1) and (3) the declaration and bond should be exempted from stamp duty by the Government.

88. A provision should be made for the cancellation of the legal aid certificate granted to him in certain events, viz., that if at any stage of the proceeding the Court *suo motu* or at the instance of the opponent or the Government comes to the conclusion for reasons to be recorded in writing that the applicant was not or has ceased to be a poor person or has been or is misconducting himself in relation to the proceeding or has entered into a champertous agreement in regard to the subject-matter of the claim, the Court should have the power to cancel the certificate granted by the Legal Aid Committee. In the said event the person who has been granted the legal aid

certificate will be under the legal obligation to refund to the Legal Aid Committee whatever amount has been spent by it on his behalf and will also be liable to pay all court fees, process fees etc. which have been remitted by the State.

89. These, in our opinion, would be sufficient safeguards to prevent an abuse of the provisions for legal aid and if properly applied would have the effect of preventing litigants from abusing the same.

90. We may add that there are provisions contained in section 35-A of the Code of Civil Procedure which enable the Courts to give compensatory costs in respect of false or vexatious claims or defences and in sections 250, 553 and 516-AA of the Code of Criminal Procedure which respectively empower the criminal Courts to award compensation in cases where false, frivolous or vexatious accusations are made, and where persons are groundlessly given in charge of police officers in Presidency Towns and where complaints are made or information given without any reasonable and probable cause against the accused. We recommend that the Courts should generally exercise their powers in this behalf with greater vigilance than what they have been doing at present, and the exercise of such powers in proper cases would have the effect of scaring away from Courts litigants who revel in vexatious, frivolous or unreasonable proceedings. These are no doubt general provisions applicable to all litigants before the Courts, but they would also have the effect of scaring away such litigants belonging to the category of poor persons or persons of limited means simultaneously with the other type of litigants who come before the Courts.

(v) Provisions for Legal Aid in Criminal Courts.

91. We have already noted before what are the provisions for legal aid existing at present in the criminal Courts, and commented upon the fact that they are very meagre and do not embrace the problem of legal aid in its entirety. It cannot be denied that persons who come to the criminal Courts particularly in the category of the accused are most in need of legal aid. There is a wide diversity of offence which are created as such by various Acts of the Legislature which are put on the Statute Book. The Legislation proceeds at such a speed that it is difficult for an ordinary citizen to keep pace with it and to acquaint himself with all its ramifications. Statutes, Ordinances, Notifications, Regulations and Press Notes are being published in such large number that an ordinary citizen finds himself bewildered in the maze and has got to take great pains to advise himself as to what the true position is with reference to a particular matter. Legal aid is, therefore, absolutely necessary in order that the citizen may defend himself in the criminal Courts particularly in the present times. Besides the ordinary offences which are enacted as such in the Indian Penal Code, there are various penal provisions which are contained in the large number of Statutes, Ordinances, Notifications etc. which have been issued under the authority of the Government and which require an expert diving into the same and rendering proper advice

in relation thereto. The persons who are charged with these various offences are not all in a position to afford lawyers to defend them in the Criminal Courts. The result, therefore, is that many a case goes unrepresented and an accused person who would otherwise have been able to prove his innocence or in any event would have been able to claim the benefit of doubt on a proper scrutiny of the evidence led on behalf of the prosecution is convicted of the offence or offences with which he is charged.

92. Having thus predicated that there is need of legal aid in the criminal Courts we shall now proceed to consider in what types of offences with which a person is charged in the criminal Courts should such legal aid be given. If legal aid is given freely as suggested by several witnesses before us, viz., that all persons who are not able to engage their own lawyers for the purpose of defence should be granted free legal aid, it would involve the State into an expenditure which would be absolutely out of all proportion to the evil which has to be mitigated. A large number of the accused in criminal Courts belong to the lower strata of society and would easily satisfy the means test which would entitle an applicant before the Legal Aid Committee to a certificate of full legal aid. If all these persons were to be granted free legal aid, it would involve an employment of a large army of lawyers in order to represent their cases before the Criminal Courts. And if an assistance of any sort is available then an average accused would avail himself of the same. One has only got to imagine what the effect of such a provision would be, having regard to the nature of the cases which come before the criminal Courts. A large number of cases which come before the criminal Courts are concerned with petty offences or offences which are punishable with merely fine. These are offences under the Municipal Acts, the District Police Act, the Motor Vehicles Act, Shops Assistants' Act, Prevention of Cruelty to Animals Act and various other minor Acts which no doubt are enacted for public safety but do not create offences involving moral turpitude or offences such as are punishable with imprisonment. The Legislature is content in the cases of such petty offences with only punishing the offenders with fines. That is considered to be quite sufficient to deter the persons accused from committing them any further. We are of opinion that these petty offences and offences which are punishable merely with fine should be excluded from the purview of legal aid. Legal aid should be granted only in those cases where the offences with which the accused are charged are punishable with a substantive sentence of imprisonment. We exclude from this category the sentence of imprisonment which is levied by the criminal Courts in lieu of or on non-payment of fine which is imposed on the accused. It is only in cases where the offences with which the accused are charged are punishable with a substantive sentence of imprisonment that legal aid should be granted.

93. Coming now to those offences which are punishable with the substantive sentences of imprisonment, a provision has already been made by the State for giving legal aid to persons who are accused of

capital offences which we have already mentioned before and for giving legal aid to persons who present jail petitions in the event of such jail petitions being admitted and the petitioner or the appellant not being in a position to provide legal aid of his own. Except for these excepted cases, we are of opinion that in all the other cases where the accused, are charged with offences punishable with substantive sentences of imprisonment legal aid should be granted.

94. It was suggested by some witnesses that such legal aid should be granted not only in the Sessions Courts but also in the Committing Magistrates' Courts. We are, however, of opinion that committal proceedings in the main are merely with a view to find out a *prima facie* case made out by the witnesses whose evidence is led on behalf of the prosecution and cross-examination of these witnesses is generally reserved. The Magistrate only applies his mind to the question whether a *prima facie* case is made out for the committal of the accused to the Sessions and no useful purpose would be served by affording legal aid to the accused at that stage. We are, therefore, of opinion that in the matter of cases exclusively triable by the Courts of Sessions no legal aid need be granted to the accused when committal proceedings are going on before the Magistrates. There are, however, cases which are not exclusively triable by the Sessions Courts but where proceedings in the nature of committal proceedings are entertained by the Magistrates. In those cases the Magistrates, if in their opinion the accused should if convicted be dealt out a sentence higher than that which they are empowered to inflict, do commit the cases to the Sessions but if they do not think that the accused if convicted deserves such punishment but the interests of justice would be served by dealing out punishment within their powers and jurisdiction, they adjudicate upon those cases and deal out the sentences which they are empowered to do. In such cases we are of opinion that legal aid should be given to the accused, because it is not certain from the very commencement that the Magistrates would commit those cases to the Sessions Courts and it would work out injustice to the accused if legal aid is not granted to them in proper cases. In those cases where there is no question of ever committing the accused to the Courts of Sessions but which are in the normal course dealt with by the Magistrates, we are of opinion that legal aid should be always given to the accused provided, however, the tests which we have laid down for the issue of legal aid certificates are satisfied by the accused. We have already stated that criminal revision applications savouring of the nature of appeals and jail petitions when admitted should be dealt with in the same manner, viz., the legal aid committee should apply its mind to the question whether the requisite tests are satisfied by the accused before legal aid certificates be granted unto them. In the case of criminal appeals also the same tests should be applied by the legal aid committee for granting legal aid certificate and all deserving applicants for legal aid should be granted the same on their satisfying the tests laid down above. We may, however, utter a note of warning that in the matter of compoundable cases it would be prudent for the legal aid committees not to issue legal aid certificates

and also to assign lawyers to the parties unless and until all avenues of arriving at a private compromise between the parties are explored and the legal aid certificate as also the assignment of lawyers should be made only when no compromise is possible to bring about between the warring elements.

95. We are also of opinion that undertrial prisoners who are awaiting their trial should also be afforded facilities for legal aid and all proper facilities should be given to them while they are in custody to approach the proper authorities for the purpose of obtaining legal aid.

96. These are the provisions with regard to the accused in criminal cases. There is, however, a class of cases which requires to be considered in this behalf, viz., the cases of complainants in non-cognizable offences. In the cases of cognizable offences the work is usually undertaken by the State on information in behalf of a cognizable offence having been laid by the complainant before the proper authorities. Once the authorities take cognizance of the offence and set the machinery in motion in order to bring the offender to book on information in that behalf being laid before them by the complainant, there is nothing more to be done by the complainant except rendering necessary assistance to the authorities, giving evidence in Court, and helping the cause of justice by doing all things necessary to be done in that behalf. In the case of non-cognizable offences, however, the State does not move to bring the offender to book. These are in the nature of private complaints and private grievances to be ventilated by the complainants themselves by filing the necessary complaints before the Magistrates and asking the Magistrates to issue the necessary process against the accused. These non-cognizable offences are of the nature of assault, some offences in connection with married women, cheating, forgery, etc. and maintenance cases, in respect of which proceedings have got to be initiated by the complainants themselves. In those cases it requires to be considered whether legal aid should be given to the complainants. An opinion was expressed that these cases are petty cases and usually compromised after a few hearings and therefore the State should not bother itself in the matter of giving legal aid to the complainants in those cases. That is not, however, a proper method of approach in regard to these non-cognizable offences. No doubt there are some offences of this nature which are petty offences and in which the complainant is guided more by the sentiment of seeking to redress his private grievance than bringing the offender to book. But there are genuine cases also in which it is really necessary to render legal aid to impecunious complainants. The maintenance cases are an illustration of the real and pressing need of the grant of legal aid. We are of opinion that even though as a rule no legal aid should be granted to complainants in non-cognizable offences, legal aid committees should be invested with a discretion in proper cases and where they find that a legal aid certificates should be granted in the interests of justice they should grant the same, provided, however, that the other tests which we have laid down above are satisfied by the applicant for legal aid before them.

(vi) Provision for Legal Aid in Civil Courts.

97. As regards the Civil Courts, we have already indicated what are the tests to be applied by the legal aid committee before a legal aid certificate be granted to the applicant in the trial Courts as well as the appellate Courts. A *prima facie* case for prosecution of the claim or of the defence has got to be made out by the applicant apart from the means test which every applicant for legal aid has got to satisfy. We have indicated the method of approach so far as the applicants for legal aid before the trial Courts as well as the appellate Courts are concerned and we have also indicated what should be considered by the legal aid committee before granting legal aid certificate in respect of civil revision applications. We are of opinion that so far as the civil Courts are concerned all deserving applicants for legal aid should be granted the certificates for legal aid provided they satisfy the tests above laid down. There is, however, a class of cases which come before the civil Courts in respect of which there has been a difference of opinion whether legal aid certificates should be granted, and they are actions for defamation, for malicious prosecution, and for such cases as are generally comprised in the category of what is called luxury litigation. It has been urged that these types of litigation are not such as should be encouraged by the State. A party may have a grievance against his opponent in the matter of the latter having defamed him or having maliciously prosecuted him in the criminal Courts and might have a claim for damages against the opponent. These are more or less sentimental claims or claims in respect of which it is urged that the State should not go out of its way for spending its own funds for helping the party who wants to prosecute the same. A large body of opinion is in favour of excluding these types of actions from the scope of legal aid. Many of these cases, it is urged, are vexatious, harassing and blackmailing. They are of a sentimental or even trivial character and it is urged that they should not be encouraged by the State. On the other hand it has been pointed out that a poor man's reputation is as dear and precious to him as the reputation of a rich man and if he is defamed in a scandalous manner, it is proper that the State should help him by granting legal aid in order to redress his grievance. The case of malicious prosecution may present a more serious aspect. An employer in the pride of his power and in order to set what he might think an example to other employees might prosecute an employee of his maliciously and without reasonable and probable cause in the criminal Courts for cheating, or falsification of accounts, or criminal misappropriation, etc., and having ample resources at his command might persecute his employee by thus prosecuting him in the criminal Courts. The employee would no doubt be acquitted of these charges by the Magistrate before whom he is tried. He would nonetheless incur considerable expenses in the matter of his defence and also might suffer apart from loss of reputation considerable loss in the matter of his being unemployed or losing any other employment or the prospects thereof. All these would be circumstances aggravating the wrong of having maliciously prosecuted

him and he would certainly be entitled to considerable amount by way of damages from his employer who has thus maliciously prosecuted him in the criminal Courts. This is only an illustration of cases which might occur in the criminal Courts and in such cases it would be proper that the applicant for legal aid who wants to ventilate his grievance against his employer for having maliciously prosected him should be granted legal aid. It is therefore urged that even though normally such personal claims or litigations savouring of luxury litigation should not be sponsored by the legal aid committees, the legal aid committees should have the discretion in proper cases to grant legal aid certificates to such applicants on a consideration of all the surrounding circumstances. We are of opinion that even though normally such type of litigation should not be encouraged by the grant of legal aid certificates, the legal aid committee should be invested with the discretion in proper cases where they are satisfied that the applicant deserves legal aid, to grant the certificates of legal aid unto them. Except for these types of cases the normal rule should be as we have indicated above that deserving applicants for legal aid should be granted legal aid in all actions in the trial Courts as well as the appellate Courts on the civil side provided they satisfy the tests which we have laid down as the conditions for the grant of legal aid certificates.

(vii) Provision for Legal Aid in Administrative and other Tribunals.

98. There is a body of opinion which says that administrative tribunals should be excluded from the scope of legal aid. They say that the legal aid should be confined at least in the beginning to proceedings in Courts of law and it is only if the State considers that the scope of legal aid should be further expanded and it provides the wherewithal or the finances for the purpose that the scope of legal aid should be expanded to the administrative tribunals. As a matter of a cautious beginning in the matter of providing legal aid we have no quarrel with this suggestion. If the finances of the State do not permit, instead of embarking on the full programme of legal aid a cautious beginning would have to be made, and the administrative tribunals might be excluded from the purview of legal aid. But even in the case of these administrative and other tribunals there are certain tribunals like the Courts of the Commissioners for Workmen's Compensation, the Labour Courts, the Industrial Court and the Payment of Wages Court, which should certainly be considered in priority over other administrative tribunals and deserving litigants appearing before these tribunals in particular should certainly be granted legal aid at the expense of the State. We shall therefore consider all these administrative and other tribunals in this context indicating our opinion as to how far it is necessary in each of them to grant legal aid to deserving litigants appearing before the same.

(a) "Sales Tax Tribunal."

99. The persons who are concerned in the cases or proceedings before the Sales Tax Tribunal are mainly merchants or traders having a turn

over of Rs. 30,000 and more, and they are persons who would not normally be such as would come within the category of poor persons or persons of limited means who would require legal aid.

(b) "Revenue Tribunal."

100. This is a tribunal under the Bombay Revenue Tribunal Act, 1939, and before which appeals and revision applications from orders passed by revenue officers under the Land Revenue Code and other Acts, viz., Vatan Act etc. are preferred. Ordinarily speaking, no special provision for legal aid is necessary before this tribunal, but according to the evidence of Mr. K. B. Wassoodew, the President of the Tribunal, there arise some cases even before this tribunal where legal aid would be necessary. In some exceptional cases even the tribunal itself might require aid to be given to the litigant appearing before it and it was recommended that lawyers who specialise in such cases should be asked to help the litigant when such intricate questions of law required to be argued before the tribunal. We are therefore of opinion that though normally no provision for legal aid is necessary for litigants appearing before the Revenue Tribunal, it should be left to the sole discretion of the legal aid committee to grant legal aid certificate to an applicant before it where in its opinion the legal aid is necessary or where the tribunal itself has made a requisition in that behalf on the legal aid committee. Even in those cases the legal aid committee must satisfy itself that the tests laid down as requisite to be satisfied before legal aid certificate can be granted by it are satisfied.

(c) "Co-operative Societies Tribunal."

101. This tribunal is set up under the Bombay Co-operative Societies Act, 1925, and its jurisdiction mainly extends over disputes between the societies and the members thereof or between societies *inter se.* Though, ordinarily speaking, the members of the societies would not be in need of legal aid, quite a number of them having properties which would exceed the limits of value laid down by us before, there may happen cases where points of law may be involved in the proceedings before the tribunal and where it would be necessary to grant legal aid to the applicant. The tribunal itself may require legal aid in certain cases or proceedings before it. We would therefore treat the question of legal aid before this tribunal on the same basis as that of legal aid before the Revenue Tribunal which we have dealt with above and recommend that though normally no legal aid should be granted to any litigant before this tribunal, the legal aid committee should be invested with sole discretion in the matter of granting legal aid on the application of the litigant before this tribunal or at the instance of the tribunal itself, provided, however, the requisite tests are satisfied.

(d) "Tenancy Tribunals."

102. These tribunals are set up under the Bombay Tenancy and Agricultural Lands Act, 1948, and they are ordinarily constituted by revenue officers of the status of Avalkarkuns or Mamlatdars. They

deal principally with disputes between landlords and tenants and the matters litigated before them are mainly in regard to the possession of land or the fixation or enhancement of rents. These tribunals are usually worked for the benefit of the tenants and the benefit of doubt is always given to the tenants. Ordinary remedies by suits are not barred by any decisions given by these tribunals and they therefore mainly perform what may be called summary functions of adjudication of disputes between landlords and tenants. Pleaders as a rule are not allowed to appear before these tribunals and a grievance has been made as regards pleaders not being allowed to appear before them. The policy of not allowing pleaders to appear before these tribunals is sought to be justified on the ground that these are simple adjudications of disputes between landlords and tenants and the appearance of pleaders would protract the proceedings without any sufficient advantage being derived by their presence. It has been urged, on the other hand, that the Avalkarkuns or Mamlatdars, are some of them not even matriculates and the assistance of lawyers is necessary to guide them in arriving at the proper conclusions. The argument is based on general principles and it is that where judicial or quasi judicial functions are performed even though by administrative or executive officers, lawyers should be allowed to appear before such authorities. No less a person than Mr. Justice J. C. Shah also voiced the opinion that if the matter required to be heard the parties must have a right to appear by a lawyer, and a general sentiment has been expressed in the answers to the questionnaire and also in the evidence of the witnesses before us that lawyers should be allowed to appear also before these Tenancy Tribunals because they perform judicial or quasi judicial functions even though they may be in the ordinary disputes between landlords and tenants. We appreciate that it is not within the scope of our inquiry to express any opinion on the advisability or otherwise of pleaders being allowed to appear before such tribunals. Even though these tribunals ordinarily safeguard the interests of tenants, there may, however, be cases where a landlord himself may be such as would come within the category of a poor person or a person of limited means and he may really be in need of legal aid. It is possible that such a landlord may apply for a certificate for legal aid to the legal aid committee having jurisdiction over the area where he resides and in those cases we would certainly recommend that the legal aid committee should have full discretion to grant a legal aid certificate to the applicant provided, however, that all the tests which we have laid down above for the issue of such certificates are satisfied by the applicant. This aid is not to be confined only to an impecunious landlord. It should be given by the committee to the landlords and tenants alike, but it should be granted only in proper cases in the exercise of its full discretion as above indicated. We also recommend that in such cases where certificates for legal aid are granted, the tribunals should allow the lawyers assigned by the legal aid committees to such assisted litigants to appear and argue their cases before them.

(e) "Debt Relief Boards."

103. These Debt Relief Boards are constituted under the Bombay Agricultural Debtors' Relief Act and are designed to grant relief unto the agricultural debtors who come within the definition of persons entitled to the protection of the Act. In order to help these agricultural debtors the Government have appointed by various resolutions passed by them from time to time in that behalf Debt Relief Assistants who help the agricultural debtors in the matter of the scaling down of debts and the obtaining of the various other reliefs within the purview of the Act. These Debt Relief Assistants who are as stated earlier 31 in number spread over the several districts of the province are full-time employees of the Government and they assist all illiterate and backward agricultural debtors who are parties to the proceedings under the Bombay Agricultural Debtors Relief Act, whatever be the caste, community, or religion of such debtors. These agricultural debtors are so illiterate that they do not even know that there is a Debt Relief Assistant and it has been urged before us that sufficient publicity should be given by the Government to the provisions which they have made in regard to the appointment of these Debt Relief Assistants so that they may be able to help these debtors in an appropriate manner. Besides the provision made for Debt Relief Assistants to appear and conduct the cases of these agricultural debtors before the Debt Relief Boards, the Government have also made a provision for the representation of these agricultural debtors in appeals before the District Judges arising from the cases decided by the Debt Relief Boards. If the appellant gives security for costs, the Government Pleader is asked to appear for the appellant before the District Court. The difficulty however may arise where the appellant is not in a position to give such security and the Government Pleader is therefore not asked to appear for the appellant in the appeal. Those would be the cases where in the absence of legal aid being given by the Government to the appellant in the ordinary course there would be need of legal aid being given by the legal aid committee having jurisdiction over the particular area.

104. In the matter of these proceedings before the Debt Relief Boards also, pleaders are not generally allowed to appear on behalf of the parties to the proceedings either before the original Court or the appellate Court, and section 42 of the Bombay Agricultural Debtors Relief Act, 28 of 1947, provides that unless the Board or the Court of appeal in the interest of justice for reasons to be recorded in writing by it allows the parties to be represented by a pleader, no pleader shall be entitled to appear on behalf of any party in the proceedings or appeal under the Act. The only two exceptions in this behalf, apart from the provision abovementioned, are where proceedings before the Court or the Court of appeal are taken under sections 24 and 28 of the Act which deal with the powers of the Court to declare transfers purporting to be sales to be in the nature of mortgages and to declare fraudulent alienations and encumbrances void. It is only in these two excepted cases

that pleaders are allowed to appear before these Courts. It is curious to observe that the Court has been defined in this Act as meaning the Court of Civil Judge, Senior Division, having jurisdiction in the area where the debtor ordinarily resides and if there is no such Civil Judge, the Court of the Civil Judge, Junior Division, having such jurisdiction to which the application may be referred. The appeals from the original Courts lie to the District Court under the terms of section 43 of the Act. Even though the disputes arising under this Act are actually heard in the trial Court as also in the Court of appeal by the Judges of Civil Courts, pleaders are as a rule not allowed to appear before them. The same remarks fall to be made in regard to this provision excluding pleaders from appearing before the Court as have been made by us in regard to the exclusion of pleaders before the Tenancy Tribunals. As a rule the Debt Relief Assistants who have been appointed by the Government would be enough to conduct all the proceedings before these Courts but there may arise cases particularly under sections 24 and 28 of the Act and even otherwise where intricate questions of law might arise and where the Debt Relief Assistants however competent they may be would not be able to cope with the situation. If the aid of the Government Pleader in the district be not available for arguing these points of law, it would be but appropriate that legal aid should be granted to the litigants concerned in those proceedings and if in proper and deserving cases the legal aid committee deemed it fit to grant certificates of legal aid to them and assign lawyers for arguing their cases, the Courts concerned should allow those lawyers to appear before them and argue out those cases.

105. In those cases before the Court of appeal where the appellant is not in a position to give security for one reason or the other, the appellant should be in a position to make the necessary application for the grant of legal aid to the legal aid committee and the legal aid committee should after satisfying itself as regards the necessity of granting the legal aid certificate grant the same to such applicant and the lawyer who has been assigned to such applicant should be allowed to appear and argue out the appeal before the Court of appeal.

106. We are not in any manner whatever suggesting that the appointments of Debt Relief Assistants should be done away with. The Debt Relief Assistants who have been appointed by the Government for rendering aid to the agricultural debtors under the Act would be expected to do and would do all the ordinary work in connection with the relief to be given to the agricultural debtors. This relief should be preferably continued in the appeal Court also by asking the Government Pleader or the Assistant Government Pleader to appear for the appellant there. It is only in those cases where the Debt Relief Assistants are not able to cope with the work by reason of any intricate question of law arising before the trial Court, or where the Government Pleader or the Assistant Government Pleader cannot appear for the appellant before the Court of appeal, that we do recommend that the

legal aid committee should be in a position to step in by granting the legal aid certificate to the applicant provided however all the tests laid down by us above are satisfied.

107. We may in passing make a reference to the need for competent petition writers certified by the Court or the Chairman of the Debt Relief Board being available for doing all the drafting and preliminary work for the agricultural debtors who come for help to the Courts under the Bombay Agricultural Debtors Relief Act. Such certified petition writers should be attached to the Debt Relief Courts and should be available for rendering all such preliminary aid by way of drafting, etc.

(f) "Commissioners for Workmen's Compensation."

108. The cases before the Commissioners for Workmen's Compensation arise under the Workmen's Compensation Act. They are mostly accident cases where the workmen employed by the industrialists or the owners of mills, factories, etc. claim compensation under the Workmen's Compensation Act for injuries suffered by them in the course of employment. Special Commissioners have been appointed by the Government for workmen's compensation cases in Bombay, Ahmedabad and Sholapur and Civil Judges, Senior Division, are appointed Commissioners for Workmen's Compensation in Broach, Godhra, Thana, Jalgaon, Poona, Dharwar, Hubli, Ahmednagar, Nadiad, Karwar, Nasik, Surat, Ratnagiri and Dhulia. The workman who suffers injuries by reason of an accident and who is entitled to compensation at the hands of the employer under the Workmen's Compensation Act files his claim for compensation before the Commissioner for Workmen's Compensation. There is no provision made for giving legal aid to him in the matter of the prosecution of his claim. Rules have been framed by Government under section 32 of the Workmen's Compensation Act and rule 34 makes provision for the remission of fees to be paid by the applicant. But beyond this remission of fees, there is no other provision which is made in the Rules which would give any sort of legal aid to the applicant. There is no provision made for the representation of the applicant by a lawyer and the workmen filing his claim as aforesaid has got to rely upon his own slender resources for the purpose of legal advice, for the collection of all necessary evidence and for the prosecution of his claim aided, if necessary by his representation by a lawyer. This works a great hardship on the workman. No doubt, the Commissioners for workmen's compensation would apply the provisions of law to the best advantage of the workman concerned, but even there there is this difficulty that they cannot go out of their way to render any legal advice to him, or to collect any evidence for him, or to advise him on evidence or even to properly conduct his case when it comes on for hearing before them. A judge's function is quite distinct from the function of an Advocate or a lawyer who represents the litigant before him and however sympathetic and considerate he may be, he cannot be expected to conduct the case of a litigant before him to the best of his advantage. This lacuna therefore has got to be filled in and it is filled in by the stepping in

of what are called the claims agencies who approach the workman the moment there is an accident, who try to collect all sorts of details from him as to the nature of the accident and the injury suffered by the workman therefrom, who try to collect all evidence for him, who even maintain him during the period that he prosecutes his claim of compensation and in return stipulate for aliquot part for the compensation which the injured workman would ultimately obtain from his employer. These claims agencies as observed before have no *locus standi* as such before the Commissioners for Workmen's Compensation. They are not necessarily composed of lawyers or qualified persons who would properly and efficiently represent the cases of the injured workmen before the Court. They are, however, necessary and almost indispensable adjuncts of these compensation Courts and are resorted to for want of better agencies. It has been urged before us by the witnesses who are acquainted with the problems of labour that these claims agencies are not quite satisfactory and it would be much better in the interests of the injured workmen themselves that some sort of legal aid were granted to these injured workmen to prosecute their claims for compensation to a successful conclusion.

109. It was, however, pointed out that these workmen mostly belong to trade unions, and the trade unions have either lawyers working for them or have sufficient funds to engage lawyers for the purpose. If that is the position, there would certainly be no need for any legal aid to be granted to them. But it is not in all cases that the injured workmen belong to the trade union, every trade union has not got a lawyer working for them and every trade union has not sufficient funds to employ a lawyer when such cases arise for determination; and we have therefore got to consider cases of workmen who do not belong to trade unions or who even though they belong to trade unions, their trade unions have either no lawyer or sufficient funds to employ a lawyer to represent their cases. These cases are such as would deserve legal aid to be granted to them. We are therefore of opinion that in the cases of those workmen who do not belong to any trade union and in the case of workmen belonging to trade unions where the trade unions have no lawyer or have no sufficient funds to employ a lawyer, or even in those cases where the trade unions to which the workmen belong are in a position to employ some sort of lawyer of their own, where the presiding Judge or Court requires that some legal aid should be available to argue intricate points of law arising before it, the legal aid committee on an application made in that behalf should grant certificates for legal aid and assign lawyers unto the applicants provided, however, that all the tests laid down above before a legal aid certificate be granted are satisfied by the applicants.

110. In connection with the legal aid to be rendered to these litigants, having their cases before the Commissioners for Workmen's Compensation, it has to be observed that all lawyers would not be competent to conduct or familiar with the conduct of cases before the Commissioners for Workmen's Compensation. We do not mean to disparage the

intellectual capacity of the lawyers' class as a whole, but we do realise and appreciate that the type of work which has got to be done before the Commissioners for Workmen's Compensation, the Commissioner for Payment of Wages, the Judges of the Labour Courts and the Industrial Court which are all allied tribunals is of a specialised character and even though any fairly competent lawyer would be able to pick up and conduct satisfactorily any type of cases which he may be entrusted with and which he may take up himself, it would be better if the class of lawyers who specialise in such litigation be entrusted with this work of representing litigants who are granted legal aid certificates. As far as possible, a full-time lawyer who has specialised in this type of work should be made available on a proper salary given to him by the State and he would be expected to work all such cases before the Commissioners for Workmen's Compensation and the other allied tribunals indicated above on legal aid certificates being granted by the legal aid committees. Where, however, there is not enough work to go round so as to justify the appointment of full-time lawyers, we would recommend that such lawyers as are familiar with this type of work should be assigned by the legal aid committees to the litigants who have been granted the legal aid certificates, and they should be entrusted with the work of representing such litigants before the Commissioners for Workmen's Compensation. We would also recommend for the purposes of facilitating the employment of either a full-time lawyer or of such special lawyers for the above purposes to link up the legal aid which is given before the Commissioners for Workmen's Compensation with the legal aid which is given before the Commissioner under the Payment of Wages Act, 1936, the Labour Courts and the Industrial Court functioning in the special areas where the work of legal aid has got to be carried on.

111. We may in this connection deal with one difficulty which was pointed out by some witnesses before us, viz., that when the work of legal aid to such injured workmen is taken up by agencies like the Bombay Legal Aid Society, public hospitals in which the injured workmen have been treated do not give any access to or supply any copies of the records wherein the nature of the injuries and the treatment given to the injured workmen etc. are noted unless and until a summons from a Court of law is received by them. We feel that this is too rigid an observance of the rules by the public hospitals concerned. It is of the essence of the conduct of these proceedings before the tribunals concerned that the lawyers or the agencies concerned with the conduct of the claims of these injured workmen should have access to these records or even be supplied with copies of these records in order to advise themselves of the nature and extent of these injuries and the feasibility or otherwise of putting forward claims for compensation for particular amounts. It would also help them in the matter of the preparation of their cases before they could be properly presented before the tribunals concerned and would be of immense help to the cause of the injured workmen.

112. While we are on this topic we might as well draw attention to a similar disability which is suffered by litigants in the civil Courts in

cases where damages are claimed for rash driving, negligence or other torts which have resulted in injuries to the party. These injuries are also treated in the public hospitals and the same story as regards the non-availability of the records of the case faces the litigant in the civil Court as it faces the injured workmen in compensation cases above noted. We are not concerned with the general aspect of the case in regard to all the litigants before the civil Courts. We would, however, in cases where assisted litigants are concerned and they have got to fight their litigation in civil Courts recommend, as in the case of the injured workmen in compensation cases, that the authorities of these hospitals should give access to and also supply copies of the necessary records to the lawyers of the parties who have been assigned to them by the legal aid committees in pursuance of certificates of legal aid granted by them to those litigants. This is no doubt a matter to be arranged by the Legal Department and the Department for Health and we hope and trust that the necessary provisions will be enacted without any undue delay.

(g) "Commissioners under Payment of Wages Act, 1936."

113. Cases which mainly arise under the Payment of Wages Act are in regard to the delayed wages and the deductions of wages by the employers. There are also appeals filed against the decisions before the Small Causes Court. These cases are conducted either by the workmen or the trade unions representing them or even sometimes by the legal practitioners appearing for them before the Commissioner. It was stated before us by one of the representatives of the Bombay Bar Association that the matters are sometimes so badly handled before the Commissioner that the applicants suffer considerably and when the matters are taken in appeal to the Small Causes Court, the Small Causes Court observes that the matters had not been properly conducted before the authority below. We therefore consider it advisable and do recommend that the cases of the applicants before the Commissioner under the Payment of Wages Act should be trated as on a par with the cases of injured workmen before the Commissioners for Workmen's Compensation, and legal aid should be granted to the applicants concerned on the same basis provided, of course, that the tests laid down for the issue of the certificates for legal aid are satisfied by the applicants.

(h) "Labour Courts and Industrial Courts."

114. The cases which come before the Labour Courts and the Industrial Court are under the Industrial Disputes Act and the Bombay Industrial Relations Act. We need not go here into all the machinery for deciding these industrial disputes or the matters arising therefrom, but it may be generally stated hat after the conciliation methods have failed the matters are taken to the Labour Courts and appeals therefrom are filed before the Industrial Court. There are also matters of principle where direct references are made to the Industrial Courts

under the relevant sections of the said Acts. The employers as a rule are corporations or big financial concerns who have the wherewithal or finances for employing eminent and senior lawyers. The workmen, on the other hand, suffer from serious handicaps in that respect. If they do not belong to any trade unions, they are in a hopeless plight, having to confront the array of all the legal acumen single handed with no one to advise them in the matter of their legal rights. Even though they happen to belong to trade unions, the trade unions generally have no trained lawyers in their midst or have no sufficient funds to employ lawyers such as to match the lawyers employed by the employers in the opposite camp. There is no doubt that there are some very flourishing and influential trade unions like the Textile Labour Association at Ahmedabad who have got sufficient funds and who have also got in their midst lawyers as union workers. The Government Labour Officer also helps the unions in the conduct of their cases before these Courts, and the opinion has therefore been expressed in some quarters that no special provisions are necessary to be made in connection with the work which comes before the Labour Courts and the Industrial Court, labour in urban areas being sufficiently organised to defend its rights in the manner indicated. It is also urged that intricate questions of law are very rare and therefore no legal aid is necessary. It has, however, got to be borne in mind that there are some important matters in which the aid of lawyers is really necessary. An illustration can be supplied by the case of the Western India Automobile Association where the question of re-instatement of the dismissed employees was canvassed not only before the Industrial Court but before the High Court both in its Original and Appellate jurisdiction and even in the Federal Court. Even though those cases are rare, they do arise and it is more often than not necessary to have intricate points of law arising out of these Acts decided by the proper tribunals. The balance between the employers and employees in this behalf is sought to be restored by the recent enactment of the amendment to the Bombay Industrial Relations Act which prohibits lawyers from appearing before those tribunals except with the permission of the presiding officer. Even so there are bound to be cases where legal aid would be necessary where intricate questions of construction of the Acts and of law would be involved and the tribunals themselves also in particular cases as has been deposed before us would require or even welcome legal aid. It is therefore necessary, in our opinion, that legal aid should be given to the workmen or even the unions concerned to fight out such cases before the Labour Courts and the Industrial Court and also the appropriate civil Courts of the land and the same remarks therefore fall to be made in regard to these workers or employees as were made by us in connection with the claims for compensation before the Commissioners for Workmen's Compensation.

115. In regard to the applications for legal aid made by workmen individually as also by the trade unions concerned, apart from the *prima facie* case test which would have to be satisfied by both, we would,

under the peculiar circumstances attached to the position of workmen and trade unions in this behalf, recommend that the certificate of the Labour Officer in the case of individual workmen and the certificate of the Registrar of Trade Unions in the case of trade unions respectively as regards their deserving legal aid should be taken by the legal aid committees as sufficient to satisfy the means test which otherwise they would expect the applicants to satisfy. The legal aid committees should not where such certificates are produced by the respective applicants before them require any further means test to be satisfied and should grant the requisite legal aid certificate after satisfying themselves with regard to the other tests which have been laid down for the granting of such certificates. As regards the lawyers to be assigned on certificates for legal aid being granted, we have it in the evidence of the witnesses familiar with the problems of labour in the province that there is sufficient work in the Industrial Court as also in the Labour Courts functioning in Greater Bombay for the employment of a fully paid lawyer to represent their cases before the respective Courts, and it would be worthwhile employing the services of such fully paid lawyers for the purpose. We have observed earlier that this work of legal aid should be linked up with the work of legal aid before the Commissioners for Workmen's Compensation and the Commissioners under the Payment of Wages Act; and if this is done, we think that it would be possible to have a full-time employee rendering legal assistance to and representing the cases of these litigants before these respective Courts. Such employees, however, would have to be paid by reason of the special nature of the work to be done by them a substantial salary and would have to be selected out of the panel of lawyers who specialise in that type of work before these Courts. Even otherwise where it is not considered desirable or expedient to have full-time employees for this purpose, the lawyers to whom the work is assigned by the legal aid committee on certificates of legal aid being granted would have to be chosen from such panels of lawyers which would be maintained either by the legal aid committees or an appropriate Government Department concerned with this type of work. If there is enough work, it would be, in our opinion, desirable, having regard to the nature and the extent of the work to be done before these Courts, that a full-time employee should be appointed by the Government for the purpose.

(i) "Arbitration."

116. There would have been no particular reason to treat the arbitrations under a separate head but for the fact that there are references to arbitration through the intervention of the Court and there are references to arbitration without the intervention of the Court but by agreement between the parties. The arbitrations through the intervention of the Court are the result of and start with an order of the Court made in that behalf in a proceeding pending before the Court.

After the arbitrator has made and published his award, the award together with the relevant papers is filed in Court, a notice of the filing of the award is served upon the parties, proceedings are taken under the Indian Arbitration Act if the parties are so advised for setting aside the award or remission of the award to the arbitrator for reconsideration etc., and ultimately a decree in terms of the award is passed by the Court in the suit itself. Arbitrations without the intervention of the Court and by agreement of parties contemplate an arbitration agreement between the parties and the reference of the disputes arising between them to the chosen arbitrator or arbitrators, the proceedings before the arbitrator or arbitrators ultimately result in an award which award is then filed in Court under the provisions of the Indian Arbitration Act. After the filing of the award and the issuing of the notice in respect of the same, the same procedure is adopted for setting aside of the award or the remission of it for reconsideration by the arbitrator etc., and thereafter the award becomes executable as a decree of the Court. There is also an intermediate position which obtains under the Indian Arbitration Act, and it is that an arbitration agreement when arrived at between the parties is filed in Court and made a rule of the Court, it is numbered as a proceeding under the Indian Arbitration Act and the same procedure obtains thereafter as if it was the arbitration through the intervention of the Court. The Indian Arbitration Act excludes all suits in Courts of law for either determining the validity or otherwise of the submission or the taking of the various proceedings in the course of the arbitration by way of appointment of arbitrators extension of the time for making the award etc., or for setting aside or remitting for reconsideration of the award to the arbitrator. In fact all proceedings in the matter of the arbitration and all applications and petitions in this behalf have got to be made only under the Indian Arbitration Act.

117. These applications or petitions which have to be made under the Indian Arbitration Act can be and should be treated as proceedings in civil Courts and are on a par with the other civil litigation as regards the grant of legal aid. The question may arise only in those cases where the arbitration is through the intervention of the Court. There the suit has been initially filed and has made some progress and at a certain stage of the proceedings the parties apply to the Court for a reference to arbitration and the Court passes the requisite order upon such application. In such cases if any of the parties happens to be an assisted litigant, we are of opinion that the legal aid should continue to be granted to such assisted litigant even before the arbitrator and right upto the time that a decree is passed by the Court in terms of the award made and published by the arbitrator. Except for the above, there appears to be no special need of making any provision for arbitration because as we have already stated all applications and petitions under the Indian Arbitration Act should be treated as on a par with the proceedings ordinarily taken before the civil Courts of the land.

(j) "Juvenile Court."

118. The Juvenile Court is set up under the Bombay Children's Act and is mostly concerned with the protection of children. All the children's cases are dealt with by that Court and in the course of the proceedings before the Court there do crop up applications of parents for custody etc., of the children. Lawyers as a rule are not allowed to appear in that Court except with the permission of the Court. Normally intricate legal questions do not arise before that Court, but there are cases where it is sometimes felt that legal aid would really be desirable. Parents who make applications before the Court do feel handicapped for want of representation by lawyers and Mr. K. J. Khandalawalla, Puisne Judge of the City Civil Court and Additional Sessions Judge of the Sessions Court, Greater Bombay, expressed an opinion before us that there was no reason why lawyers should be shut out from this Court. We are of opinion that applications for legal aid before the Juvenile Court should be entertained by the legal aid committees and the legal aid committees should be invested with the sole discretion to allow legal aid in proper cases and provide for representation of the applicant by a lawyer before that Court, provided, however, the tests laid down by us before a certificate for legal aid be granted are satisfied. We would also recommend that if in proper cases the legal aid committee grants such certificate for legal aid, the lawyer assigned by the legal aid committee to represent the applicant before the Court should be allowed by the Court to appear before it and plead his cause.

(k) "Departmental Inquiries."

119. A question was raised as regards the desirability of allowing persons into whose conduct departmental inquiries are held to be represented before the officers concerned by lawyers. There are employees and employees, some who are bold enough to represent their cases, others who would be so nervous as to forget even the essentials of the arguments, and fail to represent their cases altogether before the officers who sit in inquiry over them. In the case of such nervous employees or those who cannot properly present their cases when their enquiries are being held, it would appear that such employees should preferably be given legal aid in order to represent their cases before the officers conducting the departmental inquiries. It was urged, however, on the other hand, that the relations between the employer and the employee are a sort of domestic affair between them. Whoever happens to be the employer, whether the Government or muncipal bodies or corporations, etc., it is a pure domestic affair. It concerns only the relations between the employer and the employee and the terms of employment of the employee by the employer concerned and it should be no business of the State to provide for any legal aid to such employees when the employer under the terms of the employment is holding departmental inquiry into the conduct of the employees. The officer who is conducting the departmental inquiry is neither a Court nor a tribunal but is a person designated as such to conduct such

departmental inquiry and therefore it was urged that no legal aid should be granted to such employees. There is also a tendency amongst the Government circles that lawyers should not be allowed to represent the employees in such departmental enquiries, though one may as well question the reasons behind such prejudice of theirs against lawyers as a class. While recognising therefore that there might be hard cases and cases where a nervous employee of the type we visualised above may not be able to present his case properly before the officer conducting such departmental inquiry and may suffer by reason of such default, we see the strength of the argument which has been advanced against granting the legal aid in such departmental inquiries. We have accordingly come to the conclusion that no legal aid should be given in such departmental inquiries. We, however, want to add that in those cases where on permission being sought for by the employee from the department concerned, he is allowed to appear by a lawyer, the employee should be entitled to apply in proper cases to the legal aid committee for a certificate of legal aid and if the legal aid committee is satisfied about the tests which we have laid down above before a certificate for legal aid can be granted, it should in the exercise of its discretion issue such a certificate and provide for the representation of the applicant by a lawyer before the officer conducting the departmental inquiry, the fees of such lawyer being fixed at the sole discretion of the legal aid committee, having regard to the circumstances of the case and the work involved therein.

(viii) Machinery for Legal Aid.

120. We now proceed to consider what is the agency most suitable for the administration of the legal aid scheme. In that connection the agencies which may be considered are :—

(1) The State by a Government Department established in that behalf;

(2) Local Authorities; and

(3) The lawyers themselves, in which category we may include :

(*a*) Bar Associations, and

(*b*) Legal Aid Committees.

121. With regard to the first two agencies, we can do no better than quote the following passage from the Rushcliffe Committee's Report :

" The following is an extract from the Labour Party's memorandum :—

' There are obvious objections to the State itself establishing and maintaining legal advice bureaux. Not the least of these objections is that the State itself is directly or indirectly affected by many of the claims upon which such bureaux would have to advise. Nor, in the opinion of the Labour Party, is it desirable that local authorities should be entrusted with the duty

of establishing and maintaining legal advice bureaux..... Differences, political or otherwise, might well arise were a local authority to be held responsible directly or indirectly, for the advice given in any particular matter. Moreover, it has to be borne in mind that many local authorities, particularly those concerned with passenger transport undertakings, are themselves frequently parties to litigation.'

122. "The following is an extract from the Memorandum of the Association of Municipal Corporations :—

'We take the view that it is not the proper function of a local authority to advise and act on behalf of individual ratepayers in private matters where other ratepayers (who also contribute to the salaries of the officers of the local authority) are concerned. In our opinion, the same objections apply to State services administered by officers directly paid and employed by the State.'

'We consider that it would be disadvantageous if the close confidential and privileged relationship which exists between solicitor and client should be replaced by the relationship of a member of the public towards the State or a municipal officer. Moreover, there is a considerable body of law in which the State and local authorities are concerned on the other side.' "

123. The first two agencies being thus ruled out, there remains the agency of the lawyers themselves. There, however, the Bar Associations by themselves would not be adequate machinery for the administration of the legal aid scheme. Even though there are Bar Associations of a long standing and also enjoying some status in several parts of the province, each and every Court where the legal aid scheme would be operating does not possess a Bar Association. Even in Greater Bombay there is no Bar Association as such for the City Civil Court, and so far as the Presidency Magistrates' Courts are concerned, there are only two Bar Associations of lawyers practising in all the Courts throughout Greater Bombay. In the mofussil areas, there are Bar Associations to be found in each and every district town, but when one goes to the taluka towns not all of them have the privilege of having in their midst Bar Associations of lawyers practising in the taluka Courts. There is also a difficulty as regards the Bar Associations as such administering the scheme of legal aid. Even though we had before us representatives of several Bar Associations who proferred generous aid almost verging on the border of self-sacrifice in the matter of the administration of any legal aid scheme which may be proposed, we had unfortunately before us the opinions of several Bar Associations which were to the contrary and we naturally felt and do feel diffident about the Bar Associations as such being entrusted with the responsibility of administering any legal aid scheme. It is alleged that the legal profession as a whole has been hard hit recently by reason of several adventitious circumstances. There are various administrative tribunals which have been established, there is also the City Civil Court

established in Greater Bombay in the nature of a small claims Court having jurisdiction upto Rs. 10,000. There are several laws enacted by the Legislature under which a considerable volume of the work has been taken away from the Courts and pleaders are not allowed to appear before the tribunals which have been thus established and there is a great complaint made by the members of the legal profession that their ordinary means of living have been considerably encroached upon. A sentiment has therefore been expressed in certain quarters that no more sacrifice should be expected of the legal profession as a whole. We shall, however, not enter into this debatable problem but only observe that in this state of affairs if any legal aid scheme is entrusted to the Bar Associations as such for administration, it may be either still-born or nipped in the very bud. We have also not got here any thing like the Law Society with all its several branches all over the province as it does exist in England. Under the circumstances obtaining in England it was possible for the Rushcliffe Committee to recommend that the legal aid scheme sponsored there should be entrusted for its due administration to the Law Society, and the Law Society accepted that entrustment and undertook to work the legal aid scheme in its entirety. Unfortunately we have not got amidst us anything like the Law Society in England. The only organisation which we have got here and which can compare with the Law Society there is the Incorporated Law Society in Greater Bombay which is a society composed of the Solicitors practising on the Original Side of the High Court of Judicature at Bombay, and which mainly functions in Greater Bombay. The problem of Greater Bombay is no doubt an important one in the whole of the legal aid scheme but in evolving a proper machinery for administering the whole of the legal aid scheme, we do not think it will be advisable to divide Greater Bombay into one group and the mofussil areas into another so as to entrust the administration of legal aid scheme in Greater Bombay to the Incorporated Law Society, leaving the mofussil areas to be catered for by another type of organisation. Even in Greater Bombay we have not got the dual system working in all the Courts situated within the jurisdiction. It is only on the Original Side of the High Court truncated as it is by the establishment of the City Civil Court that the dual system is in operation. When one goes to the Appellate Side of the High Court, the City Civil Court, the Court of Small Causes and the Presidency Magistrates' Courts, the solicitors as such have no particular or special *locus standi* there, except as advocates of the Court, if they happen to be either enrolled as such or allowed to practise as such. The result therefore is that it would not do to entrust the work of administering the scheme of legal aid to the Incorporated Law Society. We would therefore recommend for all the areas of this province, Greater Bombay as well as the mofussil areas, one uniform scheme which taking count of the situation as it obtains in Greater Bombay as well as the mofussil areas will adequately meet the situation and successfully solve the problem of the administration of the legal aid scheme. We have on a consideration of all

these circumstances come to the conclusion that legal aid committees should be formed all over the province, in Greater Bombay as well as the mofussil areas, constituted in the manner hereinafter stated which legal aid committees should be entrusted with the work of the administration of the legal aid scheme.

124. Working from the lowest rung of the ladder we would first recommend that there should be Taluka Legal Aid Committees established in taluka towns, then there should be District Legal Aid Committees in district towns, then there should be certain Legal Aid Committees established in Greater Bombay, and lastly as a supervisory body and a central organisation in the province there should be a Provincial Legal Aid Committee which should be the apex of the organisation.

125. As regards the constitution of these legal aid committees, we had various opinions given before us as to who should constitute the members of these legal aid committees, having regard to the fact that it was mainly the State finances which would be responsible for the maintenance of this legal aid scheme and also having regard to the fact that besides the lawyers who would be of course concerned and vitally concerned with the administration of any legal aid scheme, there were other elements in the society, e.g., social workers, philanthrophic and charitable individuals and organisations etc. who were also interested in the administration of the legal aid scheme. It was suggested that the presiding Judges or the Magistrates in Greater Bombay and the mofussil areas should in order to attract the confidence of the State be ex-officio members of these committees. It was contended that if they were members of the committees they would bring a controlling influence to bear over the other members thereof, they would bridge over all the differences that might exist between the various members of the local bars, they would also inspire if not goad lawyers into generous and philanthrophic action by way of offering their services for the cause of poor litigants and generally supervise, check and control the activities of the other members of the committees. It was also suggested that a social worker or workers, commensurate with the importance of the work done by them in the areas concerned or in the alternative certain public spirited citizens belonging to the localities should also be associated in the legal aid committees in the several areas so as to bring a leavening influence in the deliberations of these committees. It was, on the other hand, suggested that the persons of official status in the shape of presiding Judges or Magistrates might brow-beat and almost stifle the independence of the other members of the committee and might constitute an undesirable element in the committees which may not be conducive to the proper functioning of the committees. Instead of that it was suggested that the Government Pleaders, the Sub-Government Pleaders, or the Public Prosecutors, in the respective areas had better be incorporated as members of the respective

committees. As compared with the Judges or the Magistrates, they, being the members of the Bar, would be more amenable to a harmonious working of the committees and would just as well enjoy the confidence of the Government or the State which was really going to bear the major part of the financial burden of the working of the legal aid scheme. It was also pointed out that social workers as such look askance at the lawyers and if it were ever left to them to determine what contribution the lawyers should make towards the successful working of the legal aid scheme or what fees the lawyers should get by way of remuneration for the work which they did in that behalf, the social workers would adopt their own scale in the determination thereof and the lawyers would certainly fare the worst. It was also contended that more often than not and with very honourable exceptions the social workers as a class are highly opinionated and their inclusion in the committees would not be conducive to the harmonious working of the committees.

126. We have carefully considered all these arguments which have been advanced before us. We think it is necessary that a person who would enjoy the confidence of the Government should certainly be included in each committee and we would as between the presiding Judge or the Magistrate on the one hand and the Government Pleader or the Public Prosecutor on the other prefer to have the Government Pleader or the Public Prosecutor as a member of the Committee. After all he would be a member of the Bar, he would be able to see in most respects eye to eye with the other members of the legal aid committee who would be drafted from the various members of the Bar practising in the respective areas and there would certainly be greater prospects of a harmonious working of the committees if they are included in the committees. The inclusion of the presiding Judge or the Magistrate as the case may be in the legal aid committees in those respective areas might in conceivable cases lead to favouritism or to a type of autocratic handling of the situation by the Judge or the Magistrate concerned. He would by reason of the official status and the position which he enjoys be also in a position to have his wishes respected and carried out by the other members of the legal aid committee irrespective of the merits of the propositions. It is, therefore, in our opinion, preferable and more advisable to have the Government Pleader or Sub-Government Pleader or the Public Prosecutor as the case may be as members of the committees and they would certainly enjoy the confidence of the Government.

127. The other members of the committee would be mainly drafted from the members of the Bar practising in the respective areas and we have adopted as a rule that so far as possible half of them should be senior members of the Bar and half of them should be junior members of the Bar and we also consider it desirable that where there is a sort of division between lawyers practising in the Civil Courts and lawyers practising in the criminal Courts, the lawyer members of the committees should be as far as possible selected equally from those groups.

128. As regards the selection of these lawyers it was suggested by some witnesses that the respective Bar Associations should elect them to the committees. They recommended this principle of election justifying it as the very soul of democracy. It was, however, pointed out by other witnesses that the principle of election would not work in this matter for the simple reason that people would not care to stand up for elections and moreover this was a type of work which was more a matter of onerous duty than a paying or an enviable proposition. There might also be factions in certain Bar Associations and if that was so, the matter would be further complicated. It was therefore suggested that it would be better to have the selection of the lawyer members of the committees by a process of nomination by certain responsible authorities who would see to it that proper persons who would successfully administer the scheme of legal aid would be included in the committees.

129. Over and above these members drafted from the legal profession we would in so far as it is possible to do so, have in the mofussil areas at least one social worker in the area and in the alternative, if no such social worker be available, a public spirited citizen of the locality as a member of the committee. The inclusion in the committee of such a social worker or a public spirited citizen would be advisable in so far as he would bring to bear in the deliberations of the committee considerations of the general welfare of the members of the community living in the particular area and would have a softening and a leavening influence in the deliberations of the committees. No doubt there are some chances of such social worker or a public spirited citizen being by reason of his position as such, of a domineering or an overbearing disposition. We may, however, recommend in this connection that the social worker or the public spirited citizen, whoever he may be, should be appointed or co-opted in the committees on the recommendation of the presiding Judge or Magistrate in consultation with the Government Pleader or the Sub-Government Pleader, etc., so that the selection of such a social worker or public spirited citizen will not be in any way destructive of the harmonious working of the legal aid committees.

130. There would be a lot of clerical work and also accounts work to be done by the committees in the administration of the legal aid scheme. Forms and accounts would have to be maintained by the committees, applicants for legal aid would have to make various declarations filling in particular forms prescribed, legal aid committees would have to meet in order to decide the applications submitted before them for legal aid, and records would have to be kept of the deliberations of the legal aid committees, the certificates for legal aid granted and the panels of the lawyers to whom the work would be assigned after the legal aid certificates are granted, and records of the various such functions discharged by the legal aid committees would have to be maintained. For all this work it would be necessary to have one secretary for each legal aid committee who would be entrusted with the

responsibility of doing all this type of work. We have considered the possibility of maintaining a fully paid secretary for the purpose in each legal aid committee established all over the province. The problem of finances, however, has particularly impressed us as formidable and we have as far as possible kept within our view the ideal of minimising the expenditure involved in the scheme of legal aid. We have therefore come to the conclusion that the officers or members of the staff attached to each of the Courts in whose jurisdiction legal aid committees are thus established should be drafted to work as secretaries of the legal aid committees, they receiving by way of remuneration for the services thus rendered certain amounts which would be in addition to the amounts earned by them in their substantive posts. This would considerably reduce the payments to them for work done as secretaries of the legal aid committees and would solve the problem of employing and maintaining a staff for the purpose of carrying out all the above work of the legal aid committees.

131. We are of opinion that there should be a connection or a liason between the Taluka Legal Aid Committees, the District Legal Aid Committees and the Provincial Legal Aid Committee so far as the mofussil areas are concerned and between the various legal aid committees established in Greater Bombay and the Provincial Legal Aid Committee so far as Greater Bombay is concerned. The Provincial Legal Aid Committee, as we have observed, would be the apex of the administration of the legal aid scheme and would decide questions of policy, determine the financial aid to be given by the State in the administration of the scheme of legal aid and will generally supervise, guide and control the working of the legal aid committees established in Greater Bombay so far as Greater Bombay is concerned and the District Legal Aid Committees and the Taluka Legal Aid Committees so far as the mofussil areas are concerned. In so far as the organisations in the district towns would be in a sense the superior bodies *quae* Taluka Legal Aid Committees, the District Legal Aid Committees also would have in a sort of way the powers of supervision, check and guidance over the Taluka Legal Aid Committees functioning within their jurisdiction.

132. These are the general outlines of the scheme which we have envisaged for the organisation of the legal aid scheme within the province. We shall now address ourselves to details with regard to the constitution and the working of the said several committees beginning with the Taluka Legal Aid Committees and ending with the Provincial Legal Aid Committee.

133. (A) *Taluka Legal Aid Committees.*—(1) There should be a Taluka Legal Aid Committee in every taluka having a Court of Civil Judge, Junior Division.

(2) The Taluka Legal Aid Committee should consist of the following members :

(*i*) The Sub-Government Pleader ;

(*ii*) A retired Judge or a retired Magistrate, if available ;

(*iii*) One social worker, if available.

If either or both of the above two persons be not available, their places should be filled by lawyers who are members of the local Bar Association or are practising in the taluka Courts;

(*iv*) and (*v*) Two Lawyers who are members of the local Bar Association or are practising in the taluka Courts. The retired Judge or retired Magistrate the social worker and the lawyers should all be nominated by the District Judge in consultation with the president of the taluka Bar Association. The members would work in an honorary capacity and would normally hold office for a period of three years. If a retired Judge or a retired Magistrate be available to be a member of the Committee, he should be the *ex-officio* chairman of the Committee, otherwise the Sub-Government Pleader should be the chairman of the Committee.

(3) The functions of the Committee would be:

(*a*) To receive and investigate applications for legal aid in all matters in the area within the territorial jurisdiction of the Court of the Civil Judge mentioned above.

(*b*) To provide for legal advice to applicants in the area.

(*c*) To maintain panels of lawyers for giving legal aid and advice.

(*d*) To decide all questions as to the grant or withdrawal of legal aid.

(*e*) To issue legal aid certificates and to assign lawyers where it is resolved to grant legal aid.

(*f*) To assess costs and permit payment of the amounts assessed by instalments in the case of partially assisted persons.

(*g*) To make payments to assigned panel lawyers on account of disbursements and also in full settlement and generally to provide the costs for legal aid out of the funds placed at its disposal by the Provincial Legal Aid Committee and to recover the costs awarded to assisted persons.

(*h*) To operate upon the funds on the joint signatures of the Chairman and the secretary of the Committee, and

(*i*) To make refunds to legal aid clients or to assisted persons.

(4) The accounts of the Committee should be audited annually by the Government Auditor along with the audit of the accounts of the taluka Courts. A copy of the certificate of audit should be sent to the District Legal Aid Comittee and the Provincial Legal Aid Committee.

(5) The Nazir of the Civil Court or such other officer of the Court as the Civil Judge may appoint should act as a secretary of the Committee. He should receive such remuneration as may be fixed by the Taluka Legal Aid Committee in consultation with the Civil Judge.

The duties of the secretary should *inter alia* be :

(*a*) To receive applications for legal aid,

(*b*) To receive and give receipts for contributions received from partially assisted persons and monies received on account of persons receiving legal aid or advice from the Committee and for donations,

(*c*) To maintain proper accounts of all receipts and disbursements,

(*d*) To submit statements of receipt and expenditure and report of the working of the Committee to the District Judge and the Provincial Legal Aid Committee,

(*e*) To prepare and keep the minutes of the meetings of the Committee,

(*f*) To carry on correspondence on behalf of the Committee, and

(*g*) To generally perform such other duties as the Committee may from time to time prescribe.

(6) The District Judge should have authority to call for periodical reports of the work of the Committee and to recommend to the Provincial Legal Aid Committee the removal of any member of the Committee on the ground of mal-administration, misconduct or wrongful practice, or inability to discharge his duties.

134. (B) *The District Legal Aid Committees.*—(1) There should be a District Legal Aid Committee in every district headquarters.

(2) The District Legal Aid Committee should consist of the following members :

(*i*) The Government Pleader,

(*ii*) A retired Judge or a First Class Magistrate, if available,

(*iii*) A social worker, if available.

If either or both of the above two persons be not available, their places should be preferably filled in from the retired lawyers who had been practising in the Courts and otherwise from the members of the respective Bar Associations.

(*iv*), (*v*), (*vi*) and (*vii*) Four lawyers, two of them being senior members of the Bar and two of them being junior members of the Bar from out of the members of the respective Bar Associations. All the above members excepting the Government Pleader should be nominated by the District Judge in consultation with the President of the Bar Association. They should work in an honorary capacity and should normally hold office for a period of three years. If a retired Judge or a First Class Magistrate be available to be a member of the Committee, he should be the *ex-officio* Chairman of the Committee, otherwise the Government Pleader should be such Chairman of the Committee.

(3) The functions of the Committee should be :

(*a*) To receive and investigate into applications for legal aid in all matters in the area within the territorial jurisdiction of the Court of District Judge mentioned above.

(*b*) To provide for legal advice to applicants in the area.

(*c*) To maintain panels of lawyers for giving legal aid and advice.

(*d*) To decide all questions as to the grant or withdrawal of legal aid.

(*e*) To issue legal aid cerftificates and to assign lawyers where it is resolved to grant legal aid.

(*f*) To assess costs and permit payment of the amounts assessed by instalments in the case of partially assisted persons.

(*g*) To make payment to assigned panel lawyers on account of disbursements and also in full settlement and generally to provide the costs for legal aid out of the funds placed at its disposal by the Provincial Legal Aid Committee, and to recover the costs awarded to assisted persons.

(*h*) To operate upon the funds on the joint signatures of the Chairman and the secretary of the Committee, and

(*i*) To make refunds to legal aid clients or to assisted persons.

(4) The accounts of the Committee should be audited annually by the Government Auditor along with the audit of the accounts of the District Courts. A copy of the certificate of audit should be sent to the Provincial Legal Aid Committee.

(5) The Nazir of the District Court or such other officer of the Court as the District Judge may appoint should act as a secretary of the Committee. He should receive such remuneration as may be fixed by the District Legal Aid Committee in consultation with the District Judge.

The duties of the Secretary should *inter alia* be:

(*a*) To receive applications for legal aid,

(*b*) to receive and give receipts for contributions received from partially assisted persons and monies received on account of persons receiving legal aid or advice from the Committee and for donations,

(*c*) to maintain proper accounts of all receipts and disbursements,

(*d*) to submit statements of receipt and expenditure and report of the working of the Committee to the District Judge and the Provincial Legal Aid Committee,

(*e*) to prepare and keep the minutes of the meetings of the Committee,

(*f*) to carry on correspondence on behalf of the Committee, and

(*g*) to generally perform such other duties as the Committee may from time to time prescribe.

(6) The District Judge should have authority to call for periodical reports of the work of the Committee and to recommend to the Provincial Legal Aid Committee the removal of any member of the Committee on the ground of mal-administration, misconduct or wrongful practice, or inability to discharge his duties.

135. (C) *Legal Aid Committees for Greater Bombay.*—The following Legal Aid Committees should be established in Greater Bombay :—

(1) The High Court, Original Side, Legal Aid Committee,

(2) The High Court, Appellate Side, Legal Aid Committee,

(3) The City Civil Court Legal Aid Committee,

(4) The Small Cause Court Legal Aid Committee,

(5), (6) and (7) :—

Three Legal Aid Committees should be established for the Presidency Magistrates' Courts which should be divided into three separate zones. There would be three zones in which the Presidency Magistrates' Courts would be divided; Zone (*a*) consisting of the Presidency Magistrates' Courts at Ballard Pier, Esplanade, Girgaum and Victoria Terminus, Zone (*b*) consisting of Presidency Magistrates' Courts at Mazagaon and Dadar, including the Juvenile Court at Mazagaon and Zone (*c*) consisting of Presidency Magistrates' Courts at Bandra, Kurla and Andheri.

There should thus be seven Legal Aid Committees functioning in the several Courts aforesaid in Greater Bombay.

136. (1) *The High Court, Original Side, Legal Aid Committee* should also cater for legal aid in administrative tribunals besides the Original Side of the High Court. The Committee should consist of the following members :—

(*i*) The Advocate General of Bombay,

(*ii*) The President of the Bombay Incorporated Law Society,

(*iii*) and (*iv*) Two members of the O. S. Bar to be nominated by the Advocate General,

(*v*) and (*vi*) Two Attorneys to be nominated by the President of the Incorporated Law Society.

The Advocate General should be the ex-officio Chairman of the Committee. Any member of the staff from the Prothonotary's office nominated by the Prothonotary and Senior Master of the Court should act as the Secretary of the Committee.

137. (2) *The High Court, Appellate Side, Legal Aid Committee* should consist of the following members :—

(*i*) The Government Pleader,

(*ii*) The President of the Western India Advocates' Association,

(*iii*) and (*iv*) Two senior members of the Bar,

(*v*) and (*vi*) Two junior members of the Bar,

(*iii*) to (*vi*) to be nominated by the President of the Western India Advocates' Association.

The Government Pleader should be the ex-officio Chairman of the Committee and a member of the staff of the Registrar's office nominated by the Registrar, Appellate Side, Bombay, should act as the Secretary of the Committee.

138. (3) *The City Civil Court Legal Aid Committee* should consist of the following members :—

(*i*) The Government Pleader, City Civil Court,

(*ii*) and (*iii*) Two members of the Bar practising in the Sessions Court,

(*iv*) and (*v*) Two members of the Bar practising in the City Civil Court.

The members of the Bar abovementioned should be nominated by the Principal Judge and the other Judges in consultation with the Government Pleader, City Civil Court. The Government Pleader, City Civil Court, should be the ex-officio Chairman of the Committee and a member of the office staff nominated by the Registrar, City Civil Court, should act as the Secretary of the Committee.

139. (4) *The Small Cause Court Legal Aid Committee* should consist of the following members :—

(*i*) The President, Small Cause Court Bar Association,

(*ii*) and (*iii*) Two senior members of the Bar, and

(*iv*) and (*v*) Two junior members of the Bar.

The members of the Bar mentioned above should be nominated by the Chief Judge of the Small Cause Court in consultation with the President of the Bar Association. The Government Advocate, should be the ex-officio Chairman of the Committee and the Registrar or some officer from the Registrar's office nominated by him should act as the Secretary of the Committee.

140. (5), (6) and (7) *Presidency Magistrates' Courts Legal Aid Committees* for Zones (*a*), (*b*) and (*c*) should each consist of :—

(*i*) The President of the Bar Association functioning in the Courts within the respective zones,

(*ii*) and (*iii*) Two senior lawyers practising in the Courts, within the zone, and

(*iv*) and (*v*) Two junior lawyers practising in the Courts within the zone.

The lawyer members should be appointed by the Chief Presidency Magistrate in consultation with the President of the particular Bar Association.

(*vi*) One social worker from within the area to be nominated by the Chief Presidency Magistrate in consultation with the President of the particular Bar Association.

The President of the particular Bar Association should be the ex-officio Chairman of the Committee and a member of the staff of the office of the Court or Courts within the particular zone nominated by the Chief Presidency Magistrate should act as the Secretary of the Committee.

All the members of the above Committees should act in an honorary capacity and the members of the said Committees except the Chairman thereof should normally hold office for a period of three years.

141. The functions of the above Committees should be as under :—

(*a*) To receive and investigate applications for legal aid in all matters in the area within the territorial jurisdiction of the Court or Courts abovementioned.

(*b*) To provide for legal advice to applicants in the area.

(*c*) To maintain panels of lawyers for giving legal aid and advice.

(*d*) To decide all questions as to the grant or withdrawal of legal aid.

(*e*) To issue legal aid certificates and to assign lawyers where it is resolved to grant legal aid.

(*f*) To assess costs and permit payment of the amounts assessed by instalments in the case of partially assisted persons.

(*g*) To make payments to assigned panel lawyers on account of disbursements and also in full settlement and generally to provide the costs for legal aid out of the funds placed at their disposal by the Provincial Legal Aid Committee, and to recover the costs awarded to assisted persons.

(*h*) To operate upon the funds on the joint signatures of the Chairman and the secretary of the Committee, and

(*i*) To make refunds to legal aid clients or to assisted persons.

142. The accounts of the Committee should be audited annually by the Government Auditor along with the audit of the accounts of the Court or Courts. A copy of the certificate of audit should be sent to the Provincial Legal Aid Committee.

143. The Secretary of the Committee should receive such remuneration as may be fixed by the Committee.

The duties of the Secretary should *inter alia* be :

(*a*) To receive applications for legal aid,

(*b*) to receive and give receipts for contributions received from partially assisted persons and monies received on account of persons receiving legal aid or advice from the Committee and for donations,

(*c*) to maintain proper accounts of all receipts and disbursements,

(*d*) to submit statements of receipt and expenditure and report of the working of the Committee to the Provincial Legal Aid Committee,

(*e*) to prepare and keep the minutes of the meetings of the Committee,

(*f*) to carry on correspondence on behalf of the Committee, and

(*g*) to generally perform such other duties as the Committee may from time to time prescribe.

144. (D) *The Provincial Legal Aid Committee.*—(1) The Provincial Legal Committee should be a corporation sole and may sue or be sued in its corporate name. It should have its office in Greater Bombay.

(2) It should consist of the folllowing members :—

(*i*) A High Court Judge nominated by the Chief Justice of Bombay.

(*ii*) The Advocate General of Bombay or a member of the Original Side Bar nominated by the Chief Justice and Judges.

(*iii*) The Government Pleader or a member of the Appellate Side Bar nominated by the Chief Justice and Judges.

(*iv*) Remembrancer of Legal Affairs or a representative of the Legal Department, Government of Bombay.

(*v*) The Finance Secretary or a representative of the Finance Department, Government of Bombay.

(*vi*) A representative of the Incorporated Law Society, Bombay.

(*vii*) A representative of the Bar Council.

(*viii*) and (*ix*) Two members of the Bar in Bombay except the members of the Bombay Bar Association and the Western India Advocates' Association, nominated by the Chief Justice and Judges.

(*x*), (*xi*) and (*xii*) Three members of the mofussil Bar, one from each of the three divisions, the Northern Division, Central Division and Southern Division of the province of Bombay, nominated by the Chief Justice and Judges.

(*xiii*), (*xiv*) and (*xv*) Three social workers, one of whom shall be a lady worker, nominated by the Government of Bombay.

145. The High Court Judge nominated by the Chief Justice of Bombay should be the ex-officio Chairman of this Committee. All the members of the Committee should act in an honorary capacity and the members of the Committee should normally hold office for three years. The Committee should appoint its own Secretary for carrying out all the work to be performed by such Secretary as hereinafter mentioned; he should be a full-time employee or a part-time employee as the exigencies of the work may require. His remuneration should be paid from the legal aid fund.

146. The functions of the Committee should be as under :—

(*a*) To supervise, direct and control the work of the Legal Aid Committees in Greater Bombay and the District and Taluka Legal Aid Committees and the operation of the scheme throughout the province and generally to administer the scheme,

(*b*) To dissolve any Legal Aid Committee established in Greater Bombay or any District or Taluka Legal Aid Committee or to remove any member thereof from membership,

(*c*) To submit to the Government statement of accounts for the financial year and statements of budget or supplementary budget for each financial year,

(*d*) To be in charge of and administer the legal aid fund,

(*e*) To sanction legal aid administration expenses,

(*f*) To allocate the grant for legal aid amongst the Committees in Greater Bombay and the mofussil areas and to make other disbursements out of the funds placed at its disposal by the Government, the funds to be operated upon on the joint signatures of the Chairman and the Secretary of the Committee,

(*g*) To take proceedings for recovery of and recover costs awarded to the assisted persons,

(*h*) To receive donations for legal aid,

(*i*) To call for periodical reports from the Committees in Greater Bombay and in the mofussil areas,

(*j*) To submit recommendations to the Government regarding the working of the scheme and improvements in the practice and procedure of the Courts so as to reduce the costs and delays of litigation,

(*k*) To give general and/or special directions to the several Legal Aid Committees in Greater Bombay and the mofussil areas for the proper discharge of their duties and functions,

(*l*) To make Rules and Regulations for carrying out the scheme for legal aid,

(*m*) To prescribe forms, the forms in which accounts should be kept and the reports and the returns to be made to it by the Legal Aid Committees in Greater Bombay and the mofussil areas,

(*n*) To keep a record of the reports and returns of the various committees, and compile statistical data therefrom, and

(*o*) To submit to Government an annual report of its work and the work of the subordinate committees.

147. The accounts of the Committee should be audited annually by the Auditor appointed by the Government. The duties of the Secretary should be *inter alia* to receive and grant receipts for monies received from the Government and the various Legal Aid Committees, to maintain proper accounts of all receipts and payments, to keep minutes of the meetings of the Committee, to carry on correspondence on behalf of the Committee and to perform such other duties as the Committee may from time to time prescribe.

148. We may also, while determining the machinery for legal aid and the constitution of the legal aid committees, consider a further aspect of the question, and that is :—What *procedure* should be adopted by the legal aid committees *for determining the financial means of the applicant* for legal aid. As we have already observed, the means test is one of the main tests to be satisfied before a legal aid committee would grant

a legal aid certificate to the applicant and we have also prescribed what that means test is. The difficulty, however, may arise in determining whether the particular means test is satisfied by a particular applicant. How will the legal aid committee satisfy itself as regards the means of the applicant before it ? As the situation obtains at present pauper applications are decided by the Courts after a full-fledged inquiry into the financial status of the applicant and after giving due notice thereof to the opponent as well as the Government Pleader. That inquiry is more often than not protracted andtakes considerable time of the Courts or the officers concerned. The work of investigation of pauperism is made in the High Court, Original Side, by the Prothonotary and Senior Master of the Court, and by the Registrar in the Small Cause Court at Bombay. In all other Courts that work is presumably done by the Judges themselves. It however takes up considerable time of the presiding officers and the inquiry is very often protracted. If this is the position with regard to the small quantity of work which comes to the Courts in the matter of investigation of pauperism at present, the position would be considerably more difficult when inquiries have got to be made as regards the financial means of the applicants before the legal aid committees. The legal aid committees would be confronted with quite a number of applications for legal aid and they would have to investigate the financial means of the applicants before them. If a full-fledged inquiry of the nature which obtains at present in the cases of investigation of pauperism has to be resorted to and that too after giving notice to the opponent and the Government Pleader or the representative of the Government, it would mean no end of work for the legal aid committees to do. We have therefore devised ways and means whereby a sufficient investigation into the financial position of the applicant may be made so as to satisfy the means test while at the same time not entailing too much work upon the legal aid committees. It was suggested that the legal aid committees might be satisfied by the declaration made on oath by the applicants. These would be supported by a certificate or certificates from certain officers of the Government or Gram-Panchayats, wherever they exist, or the Honorary Presidency Magistrates and J.P.s wherever they are available, or respectable citizens residing in the locality. As against this suggestion it was pointed out that certificates might be granted by people without any particular sense of responsibility and might not serve the purpose. The applicant might as well try to hoodwink the persons who are approached by him for the purpose of obtaining such certificates and the persons giving the certificates might not probably scrutinise all the information given to them by the applicant in a proper manner and might therefore give the certificates on false or insufficient information supplied to them by the applicants. There is much to be said for either point of view, but if the essential pre-requisite of the consideration of an application for legal aid be taken to be a sworn application of the applicant for legal aid solemnly affirmed by him before the Secretary of the Committee who would be empowered to administer oaths, that would be a main safeguard against the abuse of the whole

procedure. As we have observed before, a false declaration before such public officer would expose the applicant to a criminal prosecution under the relevant sections of the Indian Penal Code and would act as a sufficient deterrant against giving false information as regards his financial position. If that is coupled with the certificate or certificates from persons above mentioned, that would be an additional feature and would furnish *prima facie* information to the legal aid committee to act upon. The legal aid committee would then, if it is satisfied on such *prima facie* materials which may be furnished by the applicant, grant the legal aid certificate to the applicant either for full legal aid or for partial legal aid as the case may be. The legal aid committee might also make such further inquiries as it thinks proper or call for such further evidence as in its discretion it deems fit, to satisfy itself as regards the declaration which has been made before it by the applicant, and if as a result of the whole of the inquiry made by the legal aid committee in the circumstances of the applicant, it comes to the conclusion that the means test is satisfied by the applicant it may issue the necessary legal aid certificate to him. We do not want to fetter the discretion of the legal aid committees in this behalf. They should be invested with the sole discretion of judging the sufficiency or otherwise of the materials placed before them by the applicants either at the initial stage or at the time when further materials are called for by the committees and no more directions need be given to them as to the manner in which they should satisfy themselves as regards the financial means of the applicant. The Chairmen of the legal aid committees would be officers trusted by the Government, the members of the bar who would be included in the committees including the senior members thereof would be working with the proper sense of responsibility, and there is no reason to believe that they would be in any manner whatever duped or misguided by the applicants before them for legal aid. Apart from the declaration made by the applicant before them properly sworn by the applicant before the Secretary of the Committee, or other officer authorised to administer oaths, we might prescribe as additional means for the purpose of satisfying the legal aid committee as regards the financial means of the applicant, a certificate from the Honorary Presidency Magistrate or J. P. or a respectable citizen of the locality accepted as such by the legal aid committee or extracts from his khata which might be produced by the applicant who happens to be an agriculturist within the area or extracts from city survey register or the Panchayat register if the applicant happens to be the owner of property within the area, as *prima facie* evidence of the financial means of the applicant, leaving it of course to the legal aid committee, if it so desires, to call for further evidence in order to satisfy it as regards the financial means of the applicant. As a further safeguard we may also suggest that the declaration made by the applicant of his financial position should be in duplicate, one part thereof should be kept in the records of the legal aid committee and the other part should be sent by the Secretary of the legal aid committee to the Collector of the area so that he might carry on the proper investigations in that behalf and take

steps, if he finds that the declaration made by the applicant as regards his financial means is false in material particulars, either for the cancellation of the legal aid certificate or for the prosecution of the applicant before appropriate Courts of law.

149. We may, however, suggest that the rigour of this procedure should be relaxed in the cases of persons belonging to backward classes, having already observed that as regards the members of the backward classes there should be a presumption in their favour of their being poor and deserving of legal aid. So far as they are concerned, we would suggest that no such declaration should be insisted upon but a certificate of the Backward Class Officer or the Welfare Officer working in the locality as regards the applicant deserving legal aid should be *prima facie* considered sufficient to satisfy the means test of the applicant. In their cases the inquiry into the financial means should be held only in those cases where there is reasonable ground to believe either on information received in that behalf or otherwise that the applicant is possessed of such financial means as to disentitle him either to full legal aid or partial legal aid as the case may be. Except for those exceptional cases no such inquiry should be made in the cases of applicants belonging to the backward classes.

150. While the above inquiry is being made into the means of the applicant, we are also of opinion that no notice thereof should be given to the opponent or to the Government Pleader. If notice of the inquiry is given to the opponent or to the Government Pleader, it would take a considerable time before the inquiry could ever be concluded. The Government Pleader refers the application to the Collector and the Collector in his turn consults the Mamlatdar or the Police Patil or the Revenue Officer concerned in regard to the assets of the applicant, and it takes a considerable time before the information reaches the Government Pleader so as to enable him to decide whether he should contest the application or not. The opponent would certainly be interested in seeing that as far as possible the applicant does not receive legal aid and he would also be counted upon to put forward an opposition with a view to delay the inquiry. No doubt, normally, the opponent would be in a better position than anybody else to know what financial means the applicant possesses, and information regarding the same given by him to the legal aid committee would be very valuable in the matter of deciding whether the applicant deserves legal aid or not. The delay which however may be caused by entering into a full-fledged inquiry of this type after notice given to the opponent or the Government Pleader would be so considerable that it might in conceivable cases have the effect of defeating justice and depriving the applicant of the opportunity of having legal aid granted to him without unnecessary delay. More often than not, the applicant for legal aid would be in very great need of monies which he seeks to recover from the opponent, he would really deserve to be granted the relief with the least possible delay, and we have therefore come to the conclusion that no notice should be given to the opponent or the Government Pleader in the first instance when an application is made for legal aid before the legal

aid committee. The legal aid committee should have full discretion to grant a certificate of full or partial legal aid as the case may be on being *prima facie* satisfied as regards the same on such materials as are placed by the applicant before it. The Secretary of the legal aid committee would, as we have observed before, send a copy of the declaration made before him by the applicant for legal aid to the Collector and we also suggest that intimation of the fact of a legal aid certificate being granted to the applicant should be given by the legal aid committee to the opponent as well as the Collector after the decision in that behalf is reached by the legal aid committee. On that being done, it would be open to the Collector to set the whole machinery in motion in order to see if the financial means of the applicant are such as would disentitle him to any relief at the hands of the legal aid committee in the manner they have done. The opponent also would be put on an inquiry in porper cases in regard to the financial means of the applicant who had been thus granted the legal aid certificate. It should then be open to the opponent or the Collector as the case may be to come before the legal aid committee and ask for a cancellation of the certificate of legal aid granted to the applicant. It would be open to the opponent or the Collector to put materials before the legal aid committee and satisfy it that the declaration made by the applicant or the evidence led before it by the applicant was quite unsatisfactory or was such as if properly scrutinised would have led the legal aid committee to a contrary conclusion. The legal aid committee then on the materials already placed before it by the applicant as also those further materials which would be placed before it by the opponent or the Collector as the case may be, would come to the conclusion whether there is reasonable ground to revise its decision in the matter of the grant of the certificate of legal aid to the applicant, and would in proper cases either cancel the certificate of legal aid already granted by it or revise it in some manner so as to grant the applicant instead of the full legal aid partial legal aid of any particular nature which we have prescribed above. The legal aid certificate would then be either cancelled or modified in the manner necessary and the suit or the proceeding which has been initiated by the applicant in the Courts or even the defence which he has been allowed to prosecute with the aid granted by the legal aid committee would thus have to be modified in the light of the decision of the legal aid committee. This is the only provision which we think it necessary to make to safeguard the interest of the opponent or the Government in the matter of the grant of legal aid certificates to applicants by the legal aid committees. It would have the effect of having a speedy and expeditious disposal of all the applications made by the applicants before the legal aid committees and would also give the opportunities to the opponent or the Collector to see that proper justice is rendered to the cause of the legal aid applicants without in any manner whatever prejudicing their own interests. They would be able to see that no applicant gets undue advantage of the aid which is given by the State to poor persons or persons of limited means in the matter of the prosecution of their litigation or the defence thereof.

151. There might, however, be cases where even pending the determination by the legal aid committees of the question whether the applicant should be granted the legal aid certificate, the applicant would have his claim time-barred or the particular injury which he has been suffering from being repeated or aggravated. There might be sometimes actions in the nature of *qui-a-timet* actions which might have to be instituted by the applicants for legal aid. These are cases where time is of the essence and if the litigation was not to be either futile or rendered useless the legal aid committee should be in a position to grant interim legal aid certificates on the *prima facie* materials immediately placed before it by the applicant. No doubt there is a chance of an applicant for legal aid sleeping over his rights right up to the last moment and rushing to the legal aid committee with his application so as to leave the committee no time even to satisfy itself about the means test or the *prima facie* case test. Such situations might in conceivable cases arise but we are of opinion that they should be dealt with in a liberal way and when the legal aid committee is satisfied *prima facie* about the means test on the declaration made by the applicant in that behalf, the legal aid committee should grant interim legal aid certificates commensurate with the means of the applicant even before it goes into further investigation of the question as to whether a legal aid certificate should really be granted to the applicant or not. We therefore recommend that in such cases the legal aid committee should issue interim legal aid certificates either for full legal aid or partial legal aid, on its appearing that the means test *prima facie* satisfied on the declaration of the applicant himself. These interim legal aid certificates would only have effect until the final legal aid certificate would be granted or refused by the legal aid committee to the applicant. They would only have the effect of saving the bar of limitation or assisting the applicant in obtaining the necessary relief in *qui-a-timet* actions and similar situations. The possibility of these proceedings being abused would be very remote and that possibility might be minimised by making an example of some people who have made false declarations in that behalf by prosecuting them in the criminal Courts for making such false declarations. We are therefore of opinion that interim legal aid certificates should be granted by the legal aid committees in proper cases of the nature abovementioned.

152. We might add that the decisions of the legal aid committees in regard to the grant or refusal of legal aid certificates should be final and there should be no appeal against the same either to the superior legal aid organisation or to the Courts.

(*ix*) *Assignment of Lawyers.*

153. It is trite to say that no legal aid scheme could be worked without the help of lawyers. Lawyers are necessary adjuncts of Courts of law and any legal aid given to the poor persons or persons of limited means predicates the assignment of lawyers who would represent their cases before the Courts. The legal profession therefore assumes great importance in any scheme of legal aid. The legal aid committee

which would grant the certificate of legal aid to an applicant before it would have to provide for the representation of the applicant by a lawyer and that is the reason why we have suggested in the constitution of the legal aid committees the inclusion of as many lawyers as possible. The lawyer members of the committees would be in the best position to judge what lawyers would be capable of working up the cases of litigants in particular Courts, what lawyers enjoy the senior or the junior status, and what lawyers should be assigned to the particular applicants for legal aid to fight out their causes once legal aid certificates are granted to them.

154. The question, however, as to how the members of the legal profession should be yoked to this work of legal aid is bristling with difficulties. The lawyers' profession as a whole is in bad odour with many people in society. People have gone to the length of calling it a profession of parasites and not much work by way of philanthrophic or charitable work is expected to be rendered by them towards the administration of any scheme of legal aid. Lawyers are proverbially said to be self-seeking and looking only to their own aggrandizement and money making. That is one side of the picture. The other side of the picture is, as has been drawn before us by some representatives of the Bar Associations in the mofussil, who deposed before us, that there would be sufficient response coming from members of their respective Bar Associations if any scheme for legal aid is sponsored by the State. It has also been suggested before us by those witnesses that lawyers would be forthcoming who would work a number of briefs free and a good number of them even at taxed or reduced costs.

155. The legal profession is certainly a profession where there are possibilities of doing public work and quite a good deal of social work. It is compared with the medical profession and it is pointed out that as in the medical profession, so in the legal profession, there should be a number of members who would render free aid to poor and deserving persons. The lawyers enjoy by reason of their qualifications and position and by reason of the Sanads which they obtain from the High Court a monopoly of practice in the Courts of law and there has been a suggestion made which was reflected in the inaugural address of the Honourable Mr. B. G. Kher at the Bombay Provincial Legal Aid Conference, 1949, that there exists a moral obligation on the profession in return for the monopoly in the practice of law which it enjoys to render gratuitous legal assistance to all those members of the community who cannot afford to pay for such assistance, provided no undue burden is thereby cast upon any single individual member of the profession. A similar suggestion is to be found in the observations of Lord Chancellor Viscount Buckmaster made by him before the Canadian Bar Association on the 27th August 1925:

> "What steps are we to take to remove from our profession the reproach that the poor man cannot get the same evenhanded justice as the rich? It does not mean that he does not get justice before

the Bench. That I never heard said.....That the scales of justice are heavily weighed against the poor litigant is not an accurate statement, but nobody can deny that the rich litigant by being able to get help of the best man has an advantage. How are we going to meet that? It is something that needs to be met. I believe myself it could be met both here and at home, if everybody engaged in law—either where the branches are divided into counsel and solicitors or where they are one, just simply as lawyers—if every person took a certain number of worthy poor persons' cases in the course of a year and dealt with them exactly as he would with the case of a rich client and that we should have thus gone a long way to remove the reproach. Whether that consideration be worthy of further development or not, at any rate, I throw it out to you as one of the things that do at least merit a passing thought and may lead to the development of a valuable reform."

156. This sentiment also found expression in the resolution passed by the Bombay Provincial Legal Aid Conference, 1949 :

"Whilst expressing its regret that many Bar Associations in the country have failed to appreciate the value of legal aid to the poor, this conference urges on all the Associations in the country to organize legal aid work for the poor by constituting the necessary machinery for the purpose. It is in consonance with the dignity, the prestige and the best traditions of the profession that it should take up the leadership and conduct of legal aid."

As we have already observed before, the legal profession has a great contribution to make towards the cause of legal aid, and they should be the first to offer their services in any scheme for legal aid which may be sponsored by the State.

157. The question which then arises is how far should we impose any particular burden on the legal profession by way of a compulsory contribution to the cause of legal aid, not leaving it merely to their voluntary effort towards the fulfilment of the scheme. On going through the answers to the questionnaire and also the depositions of some of the witnesses representing the Bar Associations before us, we regret to find that considerable pessimism prevails in certain quarters as to the members of the legal profession coming forward in particularly great numbers or even sufficient numbers to successfully carry out any scheme for legal aid which may be sponsored by the State. Considerable stress has been laid upon the fact that there is an over-crowding in the profession in various places, that the conditions of life and work in various places have been such as not even to give the members of the legal profession there sufficient earnings so as to make both ends meet as also upon the fact that by reason of the enactment of legislation like the Bombay Agricultural Debtors' Relief Act and the Bombay Tenancy and Agricultural Lands Act, etc., a large slice of work in Courts of law is taken away from the members of the legal profession. It is therefore pointed out that the response from the members of the legal profession

would not be quite satisfactory. On the other hand, some of the witnesses before us have gone to the length of saying that considerable response would be obtained to any such scheme and that sort of compulsory conscription by way of asking the members of the legal profession to take up either all cases or at least a number of cases of assisted persons free, should be levied in the cause of legal aid.

158. While appreciating the force of these rival arguments, we do feel that the time has come for the members of the legal profession to wipe out the blame and the criticism which has been levelled against them so far and to contribute their mite towards the cause of legal aid which to say the least is one of the aspects of social service which any citizen may be expected to render to other citizens who deserve the same to be administered unto them. Whatever be the circumstances obtaining at particular places and whatever be the vicissitudes which the members of the legal profession have been suffering from by reason of the economic situation as also the situation brought about by the enactment of the Acts like the Bombay Agricultural Debtors' Relief Act and Bombay Tenancy and Agricultural Lands Act, etc. it is up to the members of the profession to rise to the occasion and offer their services in the cause of legal aid. We may not go to the length to which some of the witnesses have gone and suggest that all the legal work of litigants who have been granted certificates of legal aid should be done free by all the members of the legal profession alike. Having regard to the volume of the work, which is expected to be thrown on the members of the legal profession as a result of the scheme for legal aid which we are recommending, it would be absolutely unfair to the members of the legal profession to expect them to undertake the whole of it free and without any remuneration whatever. We do not share the view that work which is free or unremunerated would not be done properly by the persons to whom the same is entrusted. We have sufficient confidence in the high principles and traditions which govern the members of the legal profession to appreciate that, whether there is remuneration or not, no member of the legal profession would do the work which is thus entrusted to him in an unsatisfactory or a perfunctory manner. The senior has his reputation and he would not do anything which would tarnish the same. He would moreover not be in such dire need of money as not to devote proper attention to the work merely because it is not a remunerative piece of work. The junior has his reputation to make and we are sure that no junior member of the profession would, even though the work be unremunerative, do it in an unsatisfactory or a perfunctory manner. The urge to get on in his profession and the reputation which he has got to build up both before the client and the Bench would be sufficient spurs to proper activity in the conduct of the work even though it may be unremunerative. We, however, feel that it would be casting too much of a burden on the members of the legal profession, senior or junior, whoever they may be, to distribute all the legal aid work between them expecting them to do it quite free and without any remuneration whatever.

159. The suggestion, however, that a particular number of free cases should be given to all the members of the legal profession is a suggestion worth considering. We feel that if the members of the legal profession by virtue of the monopoly of practice which they enjoy and by virtue of the moral and social obligation which they owe as such to the poor members of the society are entrusted with a particular number of cases every year to be worked free and without any remuneration whatever, that would go someway towards reducing the incidence of the costs of legal aid on the State. It would give them the satisfaction of having contributed their mite to the cause of legal aid and would also raise them in the estimation of those members of the society who charge them with being parasites and absolute self-seekers.

160. The witnesses who appeared before us put down the number of cases to be thus distributed and worked free and without any remuneration whatever at 4 or 5, or 5 to 6, or even 10 every year by way of maximum. It was suggested that these cases would not involve any particular strain on the lawyers to whom they were assigned. To the seniors they would be only but a small part of the number of cases which they are working every year and to the juniors they would really be a sort of a practicing ground in the Courts. No doubt the distribution of these cases amongst the seniors and the juniors would be made at the discretion of the legal aid committees so that they would always assign cases of any particular difficulty or importance only to the seniors and would not entrust the same to the junior members of the profession. There is, however, one exception which might be made in this behalf and that is where in suits of a particular denomination two lawyers are allowed, but where normally in the case of legal aid cases, we would expect only one lawyer to be assigned to the party. In cases of particular difficulty and importance it would be open to the legal aid committees to assign two lawyers to the particular cases, one from the seniors and the other from the juniors so that the junior lawyer might do all the spade work and the senior lawyer might conduct the case in Court. Except for these exceptions it would be legitimate to assign cases of whatever denomination they might be to only one lawyer who would be chosen by the legal aid committee to conduct the case of the applicant who is granted the certificate for legal aid. These would be the cases which to the extent of the number mentioned above would be worked free and without any remuneration by the lawyers to whom the same be assigned. On a computation of the lawyers practising in Greater Bombay and the mofussil areas, the total number of lawyers who are on the Rolls aggregate to about 4,000 and if six cases every year were distributed amongst them by the legal aid committees, they would be able to work out 24,000 cases of applicants to whom legal aid is granted. This would, however, leave yet a large number of cases of aplicants who would be granted legal aid certificates and which would have to be worked out by lawyers who would be assigned those cases by the legal aid committees after legal aid certificates are issued by them to the applicants. It

is very difficult to make even a rough and ready estimate of the number of cases which would thus have to be assigned to the lawyers by the legal aid committees. We have excluded from the scope of legal aid criminal cases in which the accused are charged with offences punishable only with fine. We have also excluded from the scope of legal aid several types of actions which in the exercise of the sole discretion invested in that behalf in the legal aid committees, they would see reason to exclude. We have put the level of income entitling a person to full legal aid at such a low figure that it is expected that not many people would be granted certificates of free legal aid or even partial legal aid. Having regard to all these checks and limitations, we feel that after providing for these 24,000 cases distributed in this manner between the members of the legal profession to be worked free and without any remuneration, there would be left not very many cases which would have to go round and in which remuneration would have to be paid to the lawyers concerned. But even if the number of cases thus left over be considerable, we feel that sufficient response would be forthcoming from the members of the legal profession as a whole to enable the legal aid committees to cope with the work involved in the scheme of legal aid. That work which would thus be distributed amongst the lawyers would be remunerated by payment of a remuneration on a particu ar scale of costs both in civil and criminal litigation to the lawyers who are assigned to the particular litigants. That work of course would not be assigned by way of a compulsory conscription or distribution of cases amongst all the members of the legal profession. That work would be distributed amongst those lawyers who have volunteered to give legal aid and have put their names on the panels which would be prepared by the respective Associations and furnished by them to the legal aid committees. While assigning the lawyers to these cases the legal aid committees would consult the panels and would select out of the lawyers on such panels such of them as might be fairly entrusted with the type of litigation which has got to be fought in the Courts, having regard also to the fact that they would not impose any undue or illegitimate burden on the lawyers to whom such cases would be assigned. As far as possible these cases would be assigned in rotation amongst the lawyers who are enrolled on those panels and these lawyers would receive the remuneration on the scale which would be prescribed, the taxed scale in the case of civil suits and the other scale which would be prescribed by the legal aid committees in the case of criminal matters. We feel that if this is the manner in which panels are maintained by the legal aid committees, the work which is left over after the assignment of six cases every year to all the members of the profession, senior as well as junior alike, would be properly distributed amongst and dealt with by the lawyers who have got their names enrolled on the panels maintained by the legal aid committees.

161. Another suggestion was made before us by some witnesses and it was that just as pauper cases are assigned to attorneys and advocates (O. S.) in the High Court, all litigation of assigned persons should be

entrusted to all lawyers alike and distributed amongst them irrespective of the senior or junior status which they enjoyed and should be taken up compulsorily by them, that no senior or any lawyer of any particular standing should be in a position to refuse the work which has been thus assigned to him, and all lawyers who are on the roll should on the assignment of the work to them either by rotation or by an equitable distribution amongst them by the legal aid committees should the same and see it through, they not being entitled to refuse the same except for satisfactory cause shown by them to the legal aid committees. The redeeming feature of this suggestion was, however, that the lawyers who are assigned these suits or proceedings should be allowed a remuneration of 50 per cent. of the taxed costs in civil matters or such costs as may be prescribed in that behalf by the legal aid committees in criminal matters, having regard to the nature and extent of the work therein involved. Even though this suggestion might have the merit of having all the members of the profession, senior and junior alike, working in the cause of legal aid, and distributing all the cases of assisted litigants amongst them, the costs which would be involved in the remuneration payable to these lawyers would be very considerable. A remission of 50 per cent. of the taxed costs and the acceptance of only such fees as may be prescribed by the legal aid committees in the case of criminal matters would not involve a very substantial reduction in the cost of the legal aid scheme to the State. A careful consideration of this proposal as compared with the proposal which we have discussed before has led us to the conclusion that the proposal to distribute a maximum of six free cases every year amongst all the members of the Bar including the practising attorneys on the Original Side of the High Court and the payment to them of remuneration by way of taxed costs in civil cases and the payment of such reasonable costs as may be prescribed by the Legal aid committees in criminal matters where surplus cases were distributed amongst them as above indicated would evoke a better and a more favourable response from the lawyers and would also cost the State less money in the financing of the legal aid scheme. We are therefore in favour of the proposition which we have discussed before, viz., that six cases every year should be assigned to all lawyers, seniors as well as juniors alike in strict rotation and that the balance of cases of litigants who have been granted certificates of legal aid should be distributed amongst the members of the profession whose names are enrolled on the panels maintained by the legal aid committees—such panels being formed of those lawyers who voluntarily enrol their names therein for the purpose of giving legal aid to assisted litigants—on payment of remuneration as above indicated.

162. The above suggestions have been made by us on the basis that the legal profession should contribute its mite towards the working of the legal aid scheme and we certainly would not have made these suggestions if we entertained any particular doubt about the members of the legal profession responding to the call. If, however, the response

which we expect from the legal profession is not forthcoming by any mischance, we would have to consider what other alternatives would have to be thought of in order that the scheme of legal aid sponsored by the Government may be worked either fully or in some parts. At one time a suggestion was made that the work of representation in criminal Courts should be left to fully paid lawyers who may be styled Public Defenders as opposed to Public Prosecutors or Police Prosecutors who are entrusted the work of prosecuting the accused persons in those Courts. It was suggested that the type of work which has to be done in the criminal Courts is of such a nature, is so diversified and would be of such a magnitude that employment of lawyers on the basis of a payment to them for every case worked, in the manner in which the Public Prosecutors for instance are remunerated, would involve such trouble and such amount of cost to the State that it would be more expedient and more conducive to the efficient working of the scheme of legal aid and cheaper to the State to have the institution of Public Defenders. If Public Defenders are employed in this manner they would have to be attached to each and every criminal Court. As a matter of fact, we worked out the figures and found that there would be at least 25 Public Defenders in the 25 Districts of the province, there would be assistants to the Public Defenders who would have to be entrusted the work in the taluka areas where the Public Defenders attached to the district headquarters would not be able to reach, there would be at lest 7 Public Defenders attached to the Presidency Magistrates' Courts in Greater Bombay, there would be at least 2 Public Defenders attached to the Sessions Court in Greater Bombay where at least 2 sessions and even sometimes 3 sessions are held simultaneously and there would be one Public Defender appointed to work on the Appellate Side of the High Court to work before the Criminal Bench. This would bring the number of Public Defenders to at least 35 and if 2 more were added to meet the exigencies of the situation, there would be at least 37 Public Defenders apart from the Assistants to the Public Defenders in the mofussil areas. In order to employ these Public Defenders as full-time officers, they would have to be paid salaries ranging between Rs. 250 and Rs. 350 in the mofussil areas and Rs. 400 to Rs. 500 in Greater Bombay. The average expenditure would be Rs. 5,000 per year and that would involve the State in at least an expenditure of Rs. 1,85,000 per year so far as Public Defenders in the criminal Courts are concerned, apart, from the other charges which would have to be paid to the assistants to the Public Defenders in the districts who would have to go to the taluka areas. This would be the minimum cost in establishing the institution of Public Defenders and that would be only so far as the criminal Courts are concerned. The problem of rendering legal aid to litigants in civil Courts and also to litigants in the administrative and other tribunals, in particular, the Industrial and Labour Courts and the Commissioners for Workmen's Compensation, etc., would be quite separate from these costs. If even a fringe of the problem so far as the poor litigants in these Courts are concerned has got to be touched, it would involve the State into further costs which we are not in a position at present

to estimate. It was therefore considered more advisable by us that we should draw upon the public spirit of the members of the legal profession in so far as they might be called upon as we have suggested above to work at least six free cases every year, wherever they may be and to work the other briefs by rotation only, on payment of the costs which we have prescribed as payable to them for all the work over and above those six cases which they do free in carrying out the scheme of legal aid. Even though at first sight the institution of Public Defenders impressed us very much and we thought that the Public Defenders so appointed would not only be able to do the work for the litigants involved in the criminal litigation in Courts but also outside the Courts by way of advising them from the very inception or institution of the proceedings right upto the time that the matters required to be sent to the respective appeal Courts, we on further consideration came to the conclusion that the scheme which we have put forward of at least six free cases every year to be worked by all the members of the profession, senior and junior alike, and the distribution of the other cases where certificates for legal aid were granted amongst the members of the Bar who had got their names enrolled on the panels for the purpose and the working thereof by them on the basis of the remuneration of taxed costs or prescribed costs would be a better proposition. We may repeat that if by any mischance sufficient response is not forthcoming from the members of the legal profession the only thing which the State could do would be to establish the institution of Public Defenders to work up the cases of assisted persons in criminal Courts and work up the scheme of legal aid in the civil Courts and the administrative tribunals we have mentioned above as best as could be done out of the funds set apart for that purpose from the Exchequer, of course, after the six compulsory free cases are worked up by each lawyer as afore-mentioned.

163. So far as the Original Side work in the High Court is concerned, we may suggest that on a legal aid certificate being granted by the legal aid committee attached to the High Court, the legal aid committee should assign an attorney and an Advocate (O. S.) from the roll of the attorneys and Advocates (O. S.) maintained with the Prothonotary and Senior Master of the Court. The system as it obtains at present is that, more often than not, attorneys and advocates (O. S.) are assigned who might happen to have not much business on their hands or who might probably expect to work out the cases of the assisted persons without particular detriment to their other work or without any particular inconvenience to themselves. It does, however, happen that senior attorneys or senior advocates (O. S.) are ordinarily not entrusted with this type of work except in rare cases. We would therefore recommend that the legal aid committee attached to the High Court, Original Side, in the event of certificates for legal aid being granted by it, should assign attorneys and advocates (O. S.) of whatever standing they might be, seniors and juniors alike, normally by rotation, strictly in order of precedence and enrolment on the respective rolls of attorneys and advocates (O. S.), except in cases of special importance

or difficulty where the legal aid committee shall be at liberty in exercise of its absolute discretion to assign the same to those attorneys or advocates (O. S.) whom it considers capable or competent to conduct the same, and the attorneys or the advocates (O. S.) to whom the cases of such assisted persons are assigned should not be at liberty to refuse those cases except for sufficient cause shown, the sufficient cause being that the particular lawyers have advised the other side, or that for some special personal reason they are not in a position to take up the cases or that they have got more cases of assisted persons assigned to them than should be legitimately assigned and which they should be legitimately expected to work up. Except in such exceptional cases it should be the duty of attorneys and the advocates (O. S.) to whom the cases would be thus assigned to work them up to their normal conclusion. We would thus recommend that cases up to a maximum of six every year should be assigned normally in strict rotation to all attorneys and advocates (O. S.) to be worked completely free, save for this proviso that in the case of the attorneys they should be assigned only to those attorneys who practise on their own and not to those who are mere assistants in attorneys' firms, and surplus cases of assisted persons should be assigned by the legal aid committee to attorneys and advocates (O. S.) from out of the panels maintained by the legal aid committee.

164. We may also repeat the same suggestion in regard to the members of the legal profession practising in the other Courts in Greater Bombay and also in the mofussil areas. Once the legal aid committee assigns the cases of assisted persons to these lawyers it should not be open to the lawyers to refuse the same except for sufficient cause shown as indicated above. It should be considered a duty of the lawyers to whom such cases are assigned to work them up to their normal conclusion.

165. As regards the panels to be formed of lawyers who volunteer their services for legal aid in the manner indicated above, the work of forming such panels should be left to the respective Bar Associations in the areas concerned. All efforts should be made to impress upon the members of the legal profession their duty which they owe to the needy and poor members of the public and the State and the responsible officers of the State should inculcate upon them the necessity of offering such legal aid. All types of persuasion should be adopted by the State officials, by the members of the judiciary and by the public workers to induce as many members of the legal profession to volunteer for such legal aid work as possible. It was suggested by some witnesses who gave evidence before us that an inducement should be offered to the members of the legal profession enrolling their names in such panels by way of giving them preferences in the matter of employments in public services or by giving them commissions or some such appointments which very often crop up in the administration of justice in the Courts. We feel that public service of this nature should be

rendered by the members of the legal profession without any inducement of this type. Public service rendered under such inducement has no merit at all, and we believe that no decent man or no public spirited citizen ever should contemplate any reward as *quid pro quo* for the type of public service which he is expected to render in the matter of legal aid. We would go one step further and consider it absolutely derogatory to the sense of self-respect of any member of the legal profession to expect any reward of this type as a consideration for the services which as a public spirited citizen he is expected to render in the cause of the legal aid. We therefore deprecate all such idea of offering inducements to the members of the legal profession of the nature suggested. As a matter of fact the appointments in such public offices or even the distribution of commissions of this nature should be made by the State and by the judicial officers strictly on merits without any favour or partiality and no such inducement should ever be offered by the State and members of the judiciary either for rendering service in the cause of legal aid or otherwise.

166. It was also suggested by some of the witnesses before us that two panels should be formed, one panel of senior lawyers and such lawyers as would offer their services without expecting any remuneration for the same and another panel of junior lawyers or such lawyers as would expect remuneration to be paid to them for the legal aid service which they would render. It would appear as if this was a logical distinction to make and might, if adopted, apart from getting the services of senior lawyers who would proffer them as a matter of public service towards the working of the legal aid scheme, also enable junior members who cannot afford to work any briefs without remuneration to offer their services for legal aid. We however feel that such a distinction might prove itself to be an invidious distinction. Those members of the legal profession who would get themselves enrolled in the latter panel would be liable to be dubbed by the members of the public or even the lawyers who have got themselves enrolled in the former panel as selfish or seekers of petty pelf. We do not think that it is worth-while establishing any such distinctions in the panels It would be better that all lawyers whatever they may be, seniors or juniors, should voluntarily enrol themselves in one panel which would be maintained by the Bar Associations of lawyers offering their services in the cause of legal aid and that panel should be furnished by the Bar Associations to the legal aid committees functioning in the particular areas. It would, if properly administered and if there is a proper propaganda in that behalf, work more satisfactorily and would enrol a larger number of members within its fold than would be possible if two panels of the type indicated above were maintained by the legal aid committees.

167. We may also refer to one particular point in this connection and that is : what should be the standing of the members of the legal profession who would be enrolled on such panels. Any and every junior member of the Bar or attorney would certainly not be capable of

working cases which may have to be assigned to the lawyers by a legal aid committee. He would require some experience of the working of cases in Courts before he can be entrusted with the work of even an assisted litigant. We would therefore put a limit of at least five years experience as lawyer before any lawyer is enrolled as a member of the panel, leaving of course the Associations concerned a discretion to enrol on the panel a particular junior lawyer, even though he be of less standing than five years, in the event of his being considered particularly competent to conduct the case or cases which would be entrusted to him by the legal aid committee. A similar limit would also have to be placed so far as the members of the Associations of a very senior standing are concerned. There are in various Associations members on the roll thereof who though they continue to be such are, though not actually retired, almost on the retired list, who come to the Courts merely because they have no other interest in life except law and the Courts of law and who can hardly be, even though they are seniors of that standing, considered fit to be entrusted with any work even of the assisted litigants. In those cases where they are too old to work, the Associations concerned should be in a position to exclude them from the panels of lawyers to whom legal aid work might be entrusted.

168. The above considerations will have to be particularly borne in mind by the legal aid committees themselves while distributing the six cases every year amongst the lawyers, seniors and juniors alike, for working free and without any remuneration. They should not be entrusted to the junior members of the profession of the type we have indicated just above, but the Legal Aid Committees should entrust to competent juniors belonging to the above category cases to be worked up free upto the maximum prescribed if they consider them competent to conduct the same.

169. These panels which would be formed by the respective Associations and furnished to the legal aid committees functioning in the respective areas would be liable to revision from time to time by the retirement of members as also the fresh enrolment of members in the respective Associations. These panels will therefore be revised and should be revised, in our opinion, by the respective Associations after periods of every three years.

(*x*) *Remuneration for Lawyers.*

170. As regards the remuneration to be paid to the lawyers who are assigned the cases of assisted litigants by the legal aid committees, various suggestions have been made by the witnesses who appeared before us. These suggestions have ranged not only from no remuneration at all to full remuneration on the taxed scale but even remuneration above the taxed scale of fees. It has been urged that the scale of taxation of fees in the mofussil areas is very low and the percentage of fees allowed to the lawyers is no sufficient recompense to them for the work done by them particularly in these days of inflation and high prices. A case has been made out for the revision of the scale

of fees allowed on taxation as between party and party even in the mofussil arcas. So far as the work on the appellate side of the High Court is concerned, even there it has been urged that the scale of fees which is allowed on taxation as between party and party is very low and no lawyer who has got even a fair practice ever accepts any brief on that taxation scale. There is what is called a Bayana which is exacted as an additional fee taken by such a lawyer from the litigant. We fully appreciate what has been urged before us in this behalf. The standard of living has gone up considerably in Greater Bombay and all the mofussil areas. Inflation and high prices hit dwellers in Greater Bombay and the mofussil areas alike though there might be some slight variation in the incidence of this burden in the respective areas. In the main it has got to be realised that the scale of fees which is allowed on taxation as between party and party is certainly not what it ought to be and is not commensurate with the labour involved in the litigation, if a lawyer has to work, as he should work, conscientiously the cases entrusted to him by his clients. This, however, is a problem which has got to be tackled by the Government and the Legislature and is a problem which affects the general public at large. What we are concerned with in the present inquiry is what should be the costs allowed, if at all, to a lawyer to whom a case of an assisted litigant is assigned by the legal aid committee. Except in the few cases which we have indicated above as the minimum number of cases which should be worked free and without remuneration by all lawyers alike it would not be fair to expect the lawyers to work the other cases free and without remuneration, with the result that some remuneration would have to be provided to these lawyers for the work done by them even though in service of the cause of legal aid. So far as the High Court, Original Side, is concerned, it was suggested by the Bombay Incorporated Law Society, following the scheme as it has been put forward in England on the working out of the Rushcliffe Committee's Report, that in civil cases the Attorneys and Advocates (O. S.) should be paid 80 per cent. of the taxed costs as between party and party and the Advocates (O. S.) should be paid 70 per cent. of the costs allowed on taxation. The Bombay Legal Aid Society suggested that on the original side of the High Court the solicitors should be allowed their taxed costs as between party and party less 15 per cent. and counsel allowed taxed fees as between party and party less 30 per cent., and that the Advocates appearing in the City Civil Court should—the definition of the word Advocates there includes attorneys—receive the scheduled fees less 20 per cent. The representatives of the Bombay Bar Association recommended a 30 per cent. reduction in the taxed costs as between party and party so far as the Counsel were concerned but were prepared to go even upto 40 per cent. reduction in the same. We have considered the various suggestions made by these bodies and we have an alternative suggestion to make which should be adopted in preference to the fixing of any of the scales of fees in the manner above suggested. As we an have suggested earlier whenever a legal aid certificate is granted to a litigant by the legal aid committee attached to the High Court, Original Side, it

should assign an attorney and an Advocate (O. S.) from the rolls of the attorneys and the Advocates (O. S.) maintained with the Prothonotary and Senior Master of the Court irrespective of the fact whether they are seniors or juniors in standing and distribute all the cases where such certificates have been granted normally in strict rotation amongst all the attorneys and Advocates (O. S.) who are on such rolls. We do not think that the number of assisted persons who are granted such legal aid certificates would be many. There are a number of attorneys and a number of advocates (O. S.) who are on the respective rolls of attorneys and advocates (O. S.) and if cases to be worked out free and without any remuneration were thus distributed amongst them as above, the free cases worked out by these attorneys or the advocates (O. S.) will not exceed the maximum number of six which we have prescribed as the free cases to be worked by every member of the legal profession senior and junior alike during the year. We therefore recommend that even in the case of the attorneys and advocates (O. S.) practising on the original side of the High Court, the system of maximum number of six cases to be worked by them free and without any remuneration should be adopted. If there are any surplus cases over and above the maximum number of six cases to be worked free by the attorneys and the advocates (O. S.) thus distributed amongst them, those surplus cases should be assigned normally in strict rotation to attorneys and the advocates (O. S.) out of the panels maintained with the legal aid committee and the attorneys and the advocates (O. S.) there should be allowed full taxed costs or taxed fees in respect of the same. The measure which we suggest would have the salutory effect of the attorneys and the advocates (O. S.) who are much maligned by the rest of the members of the legal profession and also by the public at large thus proving themselves to be the undeserving targets of such irresponsible criticism and would really have the effect of their contributing much more towards the cause of legal aid than what would be contributed by the other members of the legal profession.

171. So far as the Appellate Side of the High Court is concerned, the same ratio should apply, viz., that six cases at least should be worked by all members of the Appellate Side Bar, senior and junior alike, free and without any remuneration, and whatever other cases have got to be worked up by them on a distribution thereof amongst the members of the panel maintained by the legal aid committee attached to the High Court, Appellate Side, should be remunerated by the payment of taxed fees unto them. In the case of criminal work where lawyers would be assigned the same out of the panels maintained by the legal aid committee, the lawyers who are thus assigned would normally be paid on the same basis as the Government Pleader or the Assistant Government Pleader is paid, viz., Rs. 40–8–0 for the first accused and Rs. 12 to Rs. 13 for the other accused. It was suggested that this fee is really inadequate and should at least be raised to Rs. 100 per case or in any case Rs. 75 per case, particularly in capital cases, and Rs. 75 or Rs. 60 respectively in other cases. We are however of opinion that the

adequacy of the fees in this behalf should not be a proper consideration when lawyers are offering their services in the cause of legal aid. The lawyers, who are assigned the work on legal aid certificates being granted by the Legal Aid Committee, and particularly in criminal Courts, or on the Appellate Side in its criminal jurisdiction, should not expect to be paid anything more than what the Government Pleader or the Assistant Government Pleader is paid. The same scale should therefore obtain in regard to these lawyers taking up the cases of the assisted litigants as in the case of the Government Pleader or the Assistant Government Pleader, or even the lawyers who are at present assigned the work by the office in cases involving capital punishment, etc.

172. With regard to all the other Courts, so far as civil litigation is concerned, the lawyers should be paid the taxed costs as between party and party, of course making provision for the six free cases which are to be distributed amongst them as above indicated. Once we expect the number of six cases being worked free by all the lawyers, seniors and juniors alike, we see no reason to curtail the fees paid to the other lawyers in the panels who are assigned cases of assisted persons by the Legal Aid Committees below what should be allowed as party and party taxed costs in the litigation.

173. The problem, however, arises in the case of criminal work. For doing the criminal work, the Government usually employs apart from the Government Pleader or the Assistant Government Pleader, Public Prosecutors or Police Prosecutors. In the Sessions Court in Greater Bombay Counsel are engaged to conduct cases on behalf of the prosecution and they are instructed by the Public Prosecutor. These lawyers are paid remuneration according to certain fixed scales, and it is suggested by some witnesses that the lawyers who are assigned the cases of assisted persons in the criminal Courts should be paid remuneration on a par with the lawyers who are employed in this manner by the Government. While generally accepting this principle, we would, however, point out that there are instances where this scale which has been adopted by the Government for the payment of the lawyers who do the work of Prosecutors is not at all enough to attract any fairly good lawyer to take up the work of the defence. There are instances known where the Assistant Government Pleader being free to accept the case for the defence gets paid as much as Rs. 100 or Rs. 200 or even Rs. 300 per day, whereas the Government Pleader or the Public Prosecutor prosecuting the same accused gets paid only Rs. 20 per day. No doubt we do not expect the State which is bearing the expense of legal aid to pay the lawyers appearing for the accused on any such basis. We, however, recognise that the scale of payment of the Government Pleader or the Public Prosecutor as the case may be may not be adequate in each case, and we would therefore recommend that though in the normal cases the remuneration payable to a lawyer who is assigned the case of an assisted litigant for the purpose of defence should be commensurate with the payment which is made by the Government to the Public Prosecutor or Police Prosecutor as the case may be, the Legal Aid Committee should be invested with a discretion in special cases to

give to the lawyers who have been thus assigned higher remuneration as determined by it, having regard of course to the nature and the extent of the work involved in the defence. It would not be fair to expect any member of the legal profession to whom a case is thus assigned to work up long or intricate cases for the remuneration thus prescribed and it is but legitimate that in such cases the Legal Aid Committee should be invested with the discretion to allow higher remuneration to these lawyers than what would otherwise be allowed to them on the prescribed scale. With these exceptions in special cases we would recommend that ordinarily the lawyers who are assigned the cases for defence of assisted litigants should get payment on the same scale as the Government Pleader or the Public Prosecutor or the Police Prosecutor as the case may be.

174. In regard to the remuneration to be paid to the lawyers appearing for the assisted litigants before the administrative tribunals, we have already indicated that it would be better, if the quantity of the work justifies the appointment, to appoint a full-time employee to represent their cases before the Labour Courts, the Industrial Court and the Commissioners for Workmen's Compensation and under the Payment of Wages Act. Such full-time employees would have to be selected from the panels of lawyers who specialise in that type of work and would have to be paid a sufficient remuneration to induce him to accept such employment. In those cases, however, where such full-time worker be not possible to be employed, the lawyers who are assigned the cases of such assisted litigants would have to be paid remuneration which would have to be fixed by the respective Legal Aid Committees functioning in the areas. What remuneration should thus be paid to these lawyers who are assigned the work of the assisted litigants in those tribunals would be left to the discretion of the Legal Aid Committees concerned who would pay them such remuneration as may be considered necessary, having regard to all the circumstances of the case and the standard of payment of fees in those tribunals. The Legal Aid Committees would of course bear in mind the fact that the lawyer who is assigned that work works on behalf of the assisted litigant and should not expect to be paid anything like what a private litigant with sufficient financial means would pay him. The payment to him should be commensurate with the scale of payment which has been adopted for payment of remuneration to other lawyers assigned to other assisted litigants in civil and criminal Courts.

(*xi*) *The Costs in Assisted Litigations.*

175. While passing the decrees or final orders in assisted litigation, the Courts would have to take into consideration the fact that the assisted person is a party to the same. It is urged that the fact that an assisted person is a party to the litigation should not make any difference whatever to the opposite party, and that the same order for costs should be made against him as in the case of an ordinary unassisted litigant. The State might in the particular circumstances

of the case grant the requisite legal aid to the assisted person, but the assisted person should not merely because of that fact be exempted from any liability whatever for the costs of an unsuccessful litigation. There is considerable force in this argument, but the very purpose of giving legal aid to the assisted litigant would be frustrated if as a result of the litigation which has been initiated or continued under a certificate which is granted by the Legal Aid Committee after considering whether the applicant has a *prima facie* case or defence, the assisted litigant is made to pay the costs of the other side as if he was an unassisted litigant. No doubt one can never be sure of a successful result of a particular litigation in Courts of law and in spite of the best scrutiny brought to bear on the question whether there is a *prima facie* case or defence, circumstances might develop while the hearing of the matter proceeds before the Court of law which might belie all expectations and the result might be something which was never expected. It is therefore but fair and proper that some limitation should be laid down as regards the liability of the assisted litigant for the costs of the other side. It was therefore recommended by the Rushcliffe Committee and we also similarly recommend that if the assisted litigant is unsuccessful any order for payment by him of the costs of the successful party should be limited to such amount as the Judge might in his discretion consider reasonable and direct having regard to all the circumstances including the financial means of the assisted litigant and any order so made should only be enforcible in such manner as the Judge might direct. A safeguard for the other side might be provided in this manner that where the assisted litigant is involved in litigation the fact that the certificate has been granted to him should be brought to the notice of all other parties to the proceedings. They would then be put wise to the situation that the party is an assisted litigant and would then bring all the considerations which would be germane to a reasonable settlement of the dispute to bear upon the situation, and would also save themselves from unnecessary costs.

176. If, on the other hand, the assisted litigant is successful, there is no reason why the unsuccessful opponent should not be made to pay the full costs as between party and party. If he fights a litigation against the assisted litigant he does it at his own risk as to costs. We therefore recommend that where the assisted litigant is successful and the other party against whom he might recover costs is an unassisted litigant the ordinary amount of costs should be recoverable and the taxing authority should pay no regard to the fact that the successful litigant has been an assisted litigant.

177. The above provisions would not affect the question of the free cases up to six in number which we have suggested above as those which should be worked free and without any remuneration by all members of the legal profession as hereinbefore stated. Whether these cases are worked free and without remuneration by the lawyers concerned, or they are worked on the basis of their being paid a remuneration by way of taxed costs or prescribed fees, the full costs of the particular

litigation should be nonetheless recovered from the unsuccessful litigant, and all such costs which are thus recovered should be paid to the Legal Aid Committee to be credited to the legal aid fund. The lawyer who has been assigned to the assisted litigant would not charge anything in respect of those briefs which have been assigned to him to be worked free and without remuneration and would be entitled to the taxed costs or the prescribed fees only in those cases which are over and above such free and unremunerated cases. Those fees, if payable to him, would be paid by the Legal Aid Committee at the conclusion of the litigation after accounts are furnished by him to the Legal Aid Committee and they would be scrutinised by the Legal Aid Committee as stated before. That would however not make any difference to the position of the lawyer for the successful assisted litigant and the Legal Aid Committee and any sub-committee in charge would see that all reasonable steps for the recovery of such costs from the unsuccessful opponent are taken. These costs when recovered would be credited to the legal aid fund on recovery thereof by the lawyer concerned, or the Legal Aid Committee, or any sub-committee in charge.

(xii) Generally.

178. Even though we have provided for the grant of legal aid certificates by the Legal Aid Committees to poor persons and persons of limited means as the condition precedent of the grant of legal aid, we would recommend that in proper cases which come before them the Courts concerned should be invested with powers in the exercise of their discretion to recommend parties appearing before them to the Legal Aid Committees for legal aid and the Legal Aid Committees should in such cases dispense with the *prima facie* case test or the test by way of the defence being necessary in the interests of justice as indicated in the earlier part of this Report and should grant legal aid certificates, full or partial as the case may be, on the means test being satisfied by the parties thus recommended to them by the Courts concerned.

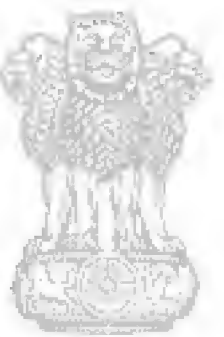
179. The making of a false declaration by the applicant for legal aid in the form to be filled in by him and sworn before the secretary of the Legal Aid Committee or other public officer should be constituted an offence under the requisite sections of the Indian Penal Code, the secretary of the Legal Aid Committee should be invested with the power of administering oaths and should also be deemed to be a public officer for the purposes of those penal sections.

180. The assisted person should be excused from giving any security for costs either under Order XXV of the Civil Procedure Code or security for costs on appeal or security under any other provision of law whatever. He should also not be ordered to deposit any amount by way of security for the plaintiff's claim in the event of his applying for leave to defend a summary suit, etc. In short, wherever the Court orders a party before it to give security by deposit of monies in Court, those provisions should not be made applicable to an assisted litigant.

181. Where an assisted person has any right to be indemnified against expenses incurred in connection with any proceedings and receives legal aid in connection with those proceedings, all such rights to the extent of the legal aid given to him should enure for the benefit of the legal aid fund as if the expenses incurred by the legal aid fund on account of the assisted person in connection with the proceedings had been incurred by him.

182. All costs, charges and expenses incurred by the Legal Aid Committee in the matter of the litigation of an assisted person should be a statutory charge on the decree or the property, if any, recovered by the assisted person as a result of that litigation. No assisted person should be entitled to recover directly any costs which might have been awarded to him as a result of the litigation and the Legal Aid Committee only should be entitled to recover these costs from the unsuccessful opponent, inclusive of the court fees, process fees and taxable out of pockets, although part or all of the same might have been remitted in the case of the successful assisted litigant. We recommend that in the Act to be enacted by the Legislature for implementing the recommendations of the Committee a statutory provision should be made creating such a charge as above indicated and enabling the Provincial Legal Aid Committee or its subordinate committees to recover the costs, etc. as above from unsuccessful opponents.

183. In view of the fact that we have provided for the remission of all court fees, process fees, charges, etc. which are charged by the State in respect of the proceedings in the various Courts and tribunals, it is not necessary to recommend any reduction in the prescribed scale of court fees or law charges as suggested by some witnesses before us. The reduction of these court fees and law charges is a problem which affects the litigants in general. Though much can be said on both the sides with regard to the high costs of litigation, we think it is scarcely within our province to opine upon the same. When the problem arises it might be thrashed out as regards the litigating public generally but so far as the inquiry before us is concerned, the problem does not arise because in all cases of assisted persons we have recommended that there should be a remission of court fees, process fees, etc., to the extent of the legal aid rendered by the State.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PART IV.

Legal Advice.

184. As has been observed before, there is a distinction between legal aid and legal advice. The legal aid which means assistance in conducting or defending proceedings in the Courts, civil or criminal, whether by remission of Court fees, free legal representation, provision for the payment of the taxable out of pockets, etc., or otherwise, has been already dealt with by us. The legal advice, meaning advice on legal matters, drafting of simple documents and negotiations apart from the conduct of litigation, may be now dealt with.

185. As regards legal advice, it may be observed that the provision for the same is even more necessary than the provision for legal aid. If legal advice is properly rendered to a needy person in the initial stages, it would have the effect of putting him on the right track with regard to his rights or liabilities and would considerably allay the anxiety and the apprehension which he would suffer from for want of the same. It was stated before us by Mr. Justice J. C. Shah that more than 30 to 40 per cent. of cases so far as mofussil areas are concerned come before the Courts because of want of proper advice. There are either documents badly drafted or correspondence badly carried on or no correct advice given before the litigation is launched upon, with the result that the parties are dragged before the Courts of law and have to suffer in consequence. This is more so in the cases of poor persons and persons of limited means and particularly persons belonging to the backward classes. They are very often subjected to exploitation or even blackmail at the hands of creditors who do not hesitate to take advantage of their position and threaten them with dire consequences of litigation in Courts of law. Very often, not being properly advised as to their rights, they play into the hands of their opponents and enter into compromises or settlements out of Court which are really prejudicial to their interest. When correspondence on their behalf is not properly carried on, advantage is taken of their ignorance and also of their impecunious position, false defences are raised in the correspondence or evasive replies are given by the other side, with the result that very often the poor litigants are prevented from having resort to the Courts of law for want of proper finances at their disposal. They very often do not think it worth their while to have resort to Courts of law and waste their time there in undertaking, what they might consider in the absence of proper legal advice being given to them, doubtful litigation. On all hands therefore it is considered necessary that legal advice of the type mentioned above should be rendered to poor persons and persons of limited means in order to advise them of their rights and liabilities so that appropriate action may be taken by them either for the redress of their grievances or for defending any claims which may be made against them.

186. Even though in England the legal aid includes the drafting of simple documents, and it was recommended by some witnesses that that should be included within the scope of legal advice to be given to the assisted persons here, we are of opinion that so far as we are situate here the drafting of even simple documents should not be included in the legal advice. That would involve the legal aid committees or the agencies established for the purpose in a quantity of work which would not be legitimate to expect of them. As a matter of fact there are in the mofussil areas which are particularly to be thought of in this connection, a number of bond writers or petition writers who are fairly well trained in the art of drafting and preparing not only simple documents but even important documents like Indentures of Lease, Indentures of Mortgage and Indentures of Conveyance. All this work is done by them on a very low scale of remuneration and it would therefore not be necessary to provide for the drafting of simple documents by any legal aid committee or the agency established for rendering legal advice to assisted persons. So far as the area of Greater Bombay is concerned, even there, there are bond writers or petition writers who aid the poor in the matter of the drafting of simple documents. There are pleaders attached to the Small Causes Court who also in their humble way do this work of drafting simple documents with a small amount of remuneration. We therefore do not think that the drafting of simple documents should be brought within the scope of legal advice to be rendered to assisted persons.

187. We, however, think that the rendering of legal advice in the shape of advice on legal matters, carrying on of correspondence, and negotiations apart from the conduct of litigation, should be undertaken by the legal aid committees or the agencies to be established for the purpose of rendering legal advice. This type of legal advice as stated above is absolutely necessary to be rendered in order that the assisted persons be put wise as to their rights and liabilities in the situations that do arise in their every day affairs. A poor person or a person of limited means who suffers from ill-treatment or misconduct or the high-handed action or even the aggression of the opponent is very often hard put to it to know what procedure he should adopt in order to redress his grievance. One can conceive of various situations which arise in the life of a poor person or person of limited means where he really needs legal advice to be rendered to him. His landlord may serve him with a notice to quit in regard to the premises which he is occupying, his employer may dispense with his services, the payment of his dues either by the employer or by any other debtor of his may be witheld from him, in the ordinary transactions of his in life there may arise situations where he may be sought to be held liable either on a promissory note or a document of guarantee or various other documents to which he might have been a party, even in the business affairs of his there may arise various situations where various claims may be made against him and where he may have to consider whether he should discharge the same or put up a defence in order to

thwart the liability in respect of the same. Apart from these types of cases he may have his own rights to prosecute against the persons who do not do the right thing unto him, he may have to file various claims or initiate various proceedings in order to ventilate his grievances and try to redress them, he may have claims against his landlord or against his employers or against the various parties with whom he may have had dealings. These are matters which may go to the civil Courts and where he would require to have legal advice given to him in order to advise him exactly in regard to his position. Apart, however, from these civil claims or defences of his, greater trouble arises when he is involved in criminal Courts. There are so many Statutes, Ordinances, Notifications and Regulations which have been issued by the Government from time to time that he may as well require to be advised with regard to his rights or liabilities in respect of the various situations which arise in the course of his ordinary affairs whether or not he comes within the clutches of the law in regard to the various regulations and particularly the regulations of control etc. Sound legal advice would have to be rendered to him here in order that he may understand how he stands in relation to the law. He may also require to be advised with regard to various situations which may arise by reason of unscrupulous persons levelling charges against him under the various penal laws of the land. All this would require the poor person or a person of limited means to ask for legal advice in order to advise him of his true position. These are instances, amongst many, which may be recounted where, in our opinion, situations might arise where legal advice would require to be given to a poor person or a person of limited means. These persons who need such protection do stand very greatly in need of legal advice and we think it is the duty of the State to provide the same by establishing the necessary machinery for the purpose.

188. A suggestion was made to us by Mr. Justice J. C. Shah in his evidence that the practice followed in some American States may be adopted here, viz., some sort of an insurance scheme may be floated in the province. The employers of certain industries or the employees themselves may be called upon to pay a small amount to a fund. A society may be set up whose business it would be to give assistance by way of legal advice and also to carry on correspondence on behalf of the members. The suggestion was for the establishment of a sort of a legal insurance society to the funds of which apart from these contributions of the employers and the employees even the Municipalities or the Local Self Government Bodies may be called upon to make their own contribution by levying a small rate upon them. Whether these institutions may be called legal insurance societies or legal assurance bureaus, they would be called upon to give legal advice to all persons, particularly the poor persons and the persons of limited means who would approach them for such legal advice. This is no doubt a good scheme if it can be sponsored throughout the province. There are Municipal Corporations and Local Self Government Bodies established all over the province which may make their contributions by the levy

of a small rate upon them and it may be considered to be a sort of a social insurance scheme which these local bodies may participate in for the benefit of the rate payers residing within their respective areas. The employers and the employees also may in such case make their own contribution towards the cause of legal advice by making their contributions towards such legal insurance scheme. These provisions, however, are general provisions for the rich as well as the poor alike and would not necessarily be established for the purpose of rendering legal advice to poor persons and persons of limited means. We do not want to suggest that such schemes if started would not be of immense benefit to all parties concerned. What we are however concerned with in this context, so far as the poor persons and persons of limited means are concerned, is the establishment of agencies for the purpose of rendering legal advice to them. If at any measurable distance of time in the future, such types of agencies are sponsored by the State or are started by the employers and employees or the Municipal Corporations or the Local Self Government Bodies, all over the province and all citizens and rate payers are catered for by them we are certainly of opinion that there would be no particular need of separate agencies for rendering legal advice to poor persons and persons of limited means; but until that stage is reached and such legal insurance societies or legal assistance bureaus are established for all citizens and rate-payers in general, we think it is necessary that the State should make provision for rendering legal advice to poor persons and persons of limited means and we shall therefore address ourselves to that aspect of the question.

189. As we have already indicated in the matter of the rendering of legal aid, there would be legal aid committees established all over the province, in Greater Bombay and in the mofussil areas, which would have panels of lawyers submitted to them by the respective Bar Associations. It would not be possible to establish what are called legal aid bureaus or legal aid clinics for the purpose of rendering legal advice to poor persons or persons of limited means in each and every area which is catered for by the legal aid committees. If such legal aid bureaus or legal aid clinics were to be established, they would require separate establishments and staff for carrying on the work of legal advice and it would be financially a difficult proposition. We therefore recommend that legal advice should be given by the individual lawyers whose names are enrolled in the panels maintained by the legal aid committees. The legal aid committee should entertain applications for legal advice from applicants who are poor persons or persons of limited means and on such applications being granted should direct the applicants to such of the lawyers enrolled in the panels as they think fit in the matter of the rendering of legal advice in the particular cases. It would be better and more convenient that the legal advice which would be thus rendered were rendered at a particular fixed place which might happen to be the office of the legal aid committee. The lawyers who are on the panels may by turn attend such office, sit there for a particular time during the day and be available

for rendering legal advice to such of the applicants as may be directed by the secretary of the legal aid committee to them. It may, however, not be possible to have such an office for each and every legal aid committee, and in that event it would be more convenient that the applicant for legal advice who is considered as the deserving recipient of the same should, when directed to a particular lawyer out of the panel, go to the office or chambers of that particular lawyer at a particular time which may be prescribed by him in that behalf and receive legal advice from him. The rendering of such legal advice by the lawyers out of the panels at their offices or chambers would in a way be more convenient also from the point of view of the senior lawyers and if that procedure is adopted it would be possible even for the senior lawyers to offer their services in the cause of legal advice. The junior lawyers might find it more convenient for them to attend the office of the legal aid committee if there is any such office available. The senior lawyers however would preferably give advice to the poor persons or persons of limited means at their own offices or chambers. If this procedure is adopted, we are confident that the work of rendering legal advice to poor persons or persons of limited means would be considerably facilitated and the purpose of rendering legal advice would be served.

190. The applicants for legal advice should not be expected to satisfy the means test in the same manner in which an applicant for legal aid is expected to satisfy the same. Legal aid requires a considerable investment of the State's funds, and therefore it is but expedient that a proper means test should be satisfied before a certificate for legal aid is granted by the legal aid committee. In the case of legal advice, however, there is not much by way of monetary expense to be incurred by the State or the legal aid committee, apart however from the exercise of the brains by the lawyers concerned and their proferring their services to the cause of legal advice. The test therefore should be a very rough and ready one. The secretary of the legal aid committee, to whom such applications for legal advice would be submitted, should merely ask for a statement of his means from the applicant for legal advice, such statement to be made by the applicant for legal advice on the usual form which is to be filled in when making an application for legal aid, that application need not necessarily be sworn by the applicant before the secretary of the legal aid committee or other public officer, but it would furnish *prima facie* material to enable the legal aid committee or its secretary to consider what are the financial means of the applicant for legal advice. If the legal aid committee or its secretary is thus satisfied that the applicant for legal advice is a poor person or a person of limited means, the applicant should be directed to a lawyer out of the panel for the rendering of the legal advice to him. A card or a particular form may be furnished to the applicant for legal advice after scrutiny is made into his means by the legal aid committee or its secretary and the applicant for legal advice would then go to the lawyer assigned to him for getting legal advice from him.

191. It would, however, be open to the legal aid committee or its secretary in proper cases, where the applicant for legal advice appears to be a person capable of employing a private lawyer for the purpose of legal advice, to reject his application and refer him to any private lawyer whom he would care to employ for the purpose. We may repeat that the test which is laid down here for the grant of a certificate should be a rough and ready test and should not involve such scrutiny as the means test of an applicant for legal aid does involve.

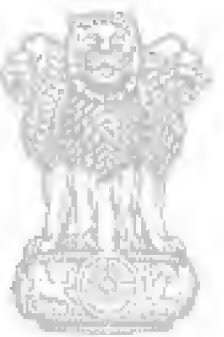
192. The question as to what fees or charges should be levied in respect of the legal advice was also discussed before us by several witnesses. It was suggested that as much as Rs. 5 for the first half an hour and Rs. 10 for the full hour of the lawyer's time employed in the rendering of legal advice should be charged to the applicant. It was also suggested that in the matter of the correspondence that may be carried on by the lawyer rendering such legal advice, he should be entitled to charge Rs. 5 for the first letter and Rs. 3 for each subsequent letter which he addresses to the opponent on behalf of the applicant for legal advice. All these suggestions no doubt err on the side of leniency. Lawyers as a rule charge much more than the amounts which have been thus specified. We are, however, concerned with the matter of rendering legal advice to poor persons and persons of limited means, and we have no hesitation in accepting a suggestion which was made in the alternative, viz., that a nominal fee only should be charged to the applicant who seeks legal advice, be he a poor person or a person of limited means and that fee should be Rs. 2 for every attendance for the purpose of legal advice or carrying on of correspondence in Greater Bombay and Re. 1 for every such attendance in the mofussil areas. These charges would of course be exclusive of the postage and registration charges in the matter of the correspondence which is despatched to the opponent, which charges the applicant would have to find for himself.

193. While laying down these charges, we may, however, recommend that in proper cases the legal aid committee or its secretary should have the power in the exercise of their discretion to remit even these charges, small though they might be, where persons who are absolutely poor and who are considered too poor even to meet these charges are concerned.

194. We do not want to insult the lawyers who are rendering their services in the cause of legal advice in this manner by providing that these meagre sums which are provided as payable by the applicants for legal advice should be paid to or appropriated by the lawyers concerned. The monies thus realised by the levy of such charges should not be appropriated by the lawyers concerned but should form part of the legal aid fund.

195. There are, as we have been told, certain agencies in the shape of Debt Relief Assistants or Labour Welfare Officers or even the workers in various charitable organizations who do off and on render legal advice to persons falling within their jurisdiction and going to them for legal advice. We hope and trust that such agencies, official as well as non-official, will continue the meritorious work of legal advice which they have been rendering to the persons who thus go to them for the same. This type of work will certainly have the effect of relieving the agencies for legal advice which we have prescribed above of a considerable part of their work.

196. We further hope that when correspondence is being carried on by these agencies for legal advice, an effort will be made by them to bring both the parties to the dispute together before them, so that they might, if possible, put their heads together and arrive at a reasonable settlement of their disputes. If genuine efforts are made in this behalf for bringing about settlements between the disputing parties, we are sure that much of the litigation which otherwise comes to the Courts of law would be avoided and yeoman service would be rendered to the cause of legal advice and legal aid by the successful termination of such efforts.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PART V.

Recommendations to Render Justice more Easily Accessible to Assisted Persons.

197. In the questionnaire which we framed and addressed to various individuals and institutions, we framed two questions:

(1) What are the features of the present system of administration of Justice which render justice not easily accessible to poor persons, to persons of limited means and to persons of backward classes ? and

(2) What, in your opinion, are the measures (including simplification of procedure in courts of law, conciliation, pre-trial and the like) which should be adopted in order to render justice readily accessible to such persons ?

198. These questions were framed by us on the basis of the terms of reference to us which asked us *inter alia* to make such recommendations as may be desirable so as to render justice more easily accessible to poor persons, to persons of limited means and to persons belonging to backward classes. It was, however, suggested in some of the answers to the questionnaire which we received and also in the evidence of some of the witnesses who appeared before us that this question was a larger question which concerned all litigants in general who had their litigation before the civil and the criminal Courts of the land and also was a question which not only affected the laws passed by the Provincial Legislature but also the laws passed by the Central Legislature. It was therefore suggested that this question had better be referred to a separate committee to be appointed by the Government and not be dealt with by us in the course of a limited inquiry of the nature which we have been called upon to make. We appreciate that this is a question which is of a wide importance and covers all classes of litigants rich as well as the poor and also concerns the laws passed by the Provincial as well as the Central Legislature if any reforms in the matter of those laws were to be suggested. We must, however observe that the question is not merely one of pointing out the defects in the present laws and procedure but it is one of pointing out what are the necessary modifications to be made in the laws and the procedure with a view to render justice more easily accessible to poor persons and persons of limited means. It cannot be denied that the maxims "Delay defeats justice" and "Justice delayed is justice denied" are equally applicable to the rich and the poor alike. Nonetheless it must be recognised that the denial of justice which is consequent upon the delays in litigation as also the various other defects in the laws and the procedure which tend towards such delay press more heavily upon the poor persons and the persons of limited means than on the rich litigants. It matters not at all to a rich litigant whether he gets his decree or relief within a short time; but it is a matter of life and death to a poor litigant more often than

not that his case or proceeding should be terminated without undue delay and relief be granted to him within the shortest possible period of time. A rich litigant is also very often interested in the protracting of litigation by taking advantage of all sorts of technicalities and by delaying the disposal of the same by making all sorts of applications for adjournments, transfers, and what not, simply with a view to tire out the patience of his poor opponent, so that he may get favourable terms in the matter of any compromise which may be suggested ; nay it is sometimes also hoped by him that by reason of the delay the patience of the poor opponent would be tired out, his sinews of war might be exhausted and he might beat an ignominious retreat. If all these results and the like ones have got to be averted, the only way in which that can be done is by providing such ways and means as would considerably curtail if not absolutely negative all delays in litigation. It is the poor persons and the persons of limited means who are thus in need of such provisions to help them in the matter of speedy and expeditious disposal of their litigation, and it is therefore that we think, inspite of the admonition which was given to us as above, that it is desirable to deal with this aspect of the question in this Report of ours.

199. As regards the features of the present administration of justice which render justice not easily accessible to poor persons and persons of limited means, there are several heads under which the same can be divided. Firstly, the complexity of modern laws and the complicated and complex structure of laws in language not easily understandable by the common man, so much so that the interpretation thereof by the Courts also is difficult, is one of the features of the present administration of justice. This feature is inevitable in the present juncture where the State has to cope with various problems and deal with the various situations that have arisen, particularly after the attainment of independence and the partition of India into the two Dominions of India and Pakistan. Secondly, the high cost of the litigation, at least for urban areas and the heavy court fees and process fees which have to be paid by the litigants before they can fight their cases in the several Courts are another deterrent. Not all people can afford these heavy costs, court fees and process fees, with the result that many a rightful claim does not come before the Courts and is either dropped or otherwise compromised to the detriment of the interests of the pursuer. Thirdly, the procedure which is adopted in the Courts is very cumbrous and full of technicalities. There are various provisions to be found therein which are availed of by unscrupulous litigants for the purpose of delaying the final adjudication of the rights and liabilities of the parties. There are provisions which have got to be obeyed by the Courts, whether they desire or not, whereby an unscrupulous litigant delays the proceedings by threatening to go into revision or by threatening to make a transfer application and adopting the like procedure. The Courts are helpless and they are bound to give time to enable the unscrupulous litigant

to make such applications, whatever may be the result thereof. The procedure also is otherwise such as tends to unnecessary costs and delays, with the result that the ends of justice are more often than not frustrated. Fourthly, there is gross delay in the disposal of cases before the Courts. There are frequent adjournments, not only on interlocutory applications on technical grounds as mentioned above, but also for the convenience of Advocates and also because the boards are so framed in the civil and criminal Courts that cases are put on the boards but are not reached unless and until a number of adjournments are taken. Even there, the exigencies of the work in the several Courts do not allow of a day to day hearing or a full hearing of the suits or proceedings once they are reached before the Court. Only a part of the time of the day is given to the hearing and final disposal of these cases or proceedings, with the result that even though the hearing and final disposal of these cases or proceedings is taken up by the Court, frequent other dates are given and the parties have got to appear before the Courts on those frequent adjourned dates before the matters are finally disposed of. Adjournments are also frequently asked for because the parties or their witnesses and particularly the prosecution witnesses in the criminal Courts are not present at the date of the hearing. The result is that considerable inconvenience is caused to the parties who are present, those parties who come and attend the Court with their witnesses are asked to go away after having undergone all the trouble and inconvenience and expenses of having reached the Court in this manner to again attend the Court on such adjourned date or dates as may be fixed in that behalf. There are many unnecessary adjournments which are given for the convenience of the prosecution witnesses and it very often happens that cases in the criminal Courts are not reached for hearing and final disposal until a number of adjournments of this nature are granted by the Courts. There is also laxity in the supply of extracts or copies of public documents such as records of rights, with the result that the parties do not get the same in order to produce them in time before the Courts to enable the Courts to proceed with the hearing of the particular cases before them. There is also unnecessary delay in the execution of processes with the result that adjournments have got to be applied for on that ground. Lastly, the Courts are situate at great distances from the villages with the result that justice is not brought to the door of the poor. The Judges or presiding officers do not sit in Court at definite stated hours of the day and carry on the work for a particular period of the day, with the result that sometimes only a few hours of the day are occupied in doing the work of hearing and final disposal of the suits or proceedings before them. They also sometimes record the evidence mechanically without trying to grasp the threads of the case and applying their mind to the same until the stage of addresses. Cases are very often, after the evidence is thus recorded, adjourned for the purpose of addresses and delay in the disposal of the case is the inevitable result. Even after the

hearing of the cases is over, there are instances where judgments are reserved and not delivered until a considerable time elapses after the arguments are over. These are the main features of the present administration of justice which tend to the delay in administering the same and which particularly render justice not easily accessible to poor persons and persons of limited means.

200. In this connection the following remarks of the Honourable Mr. B. G. Kher in his inaugural address to the Bombay Provincial Legal Aid Conference, 1949, are apposite :

> "Coming to the question of delays in courts, you are aware that in 1923 at the instance of the late Sir Tej Bahadur Sapru, the Law Member of the Government of India, a committee of eminent lawyers including judges, known as the Civil Justice Committee was appointed. The Committee went over the whole field of civil law, both substantive as well as procedural and made its report in 1925. Their investigation or the scope of their enquiry was confined no doubt to the branch of law known as the Civil Law. They were not concerned with the Criminal Law or the procedure. The Committee's report is very valuable. The Government of India introduced legislation accepting some of their recommendations. But there is still great scope for improvement in civil law and procedure in the light of their recommendations."

These remarks are concerned with the reforms to be made in the laws and procedure in so far as they concern the civil litigation. They are also apposite in the matter of the criminal litigation and it is high time that the Provincial Government in collaboration with the Central Government and even otherwise should appoint a committee for the purpose of going into this question in its general aspect so that the ways and means may be devised and recommended by that committee and modifications in the laws and the procedure obtaining in the civil and the criminal Courts may be suggested so as to render justice more easily accessible to the litigants in general.

201. We are, however, concerned at the present juncture to point out for the consideration of the Government and the High Court the various suggestions which have been made to us in the course of the inquiry by the various persons who have answered our questionnaire and the various witnesses who have appeared to give evidence before us, in this behalf.

202. So far as the first feature above discussed is concerned, we may observe that full publicity should be given by the State and the departments concerned, including the Director of Publicity, to all the Statutes, Ordinances, Notifications, Regulations, etc. which are passed by the authorities from time to time in language or languages easy to understand by the public in general and should be more easily accessible to the public in general.

There are various instances where a litigant or a party seeking redress has got to fumble in the matter of having access to the relevant provisions of law which he would have to bring to his aid so that he may initiate the proceedings in a proper manner or defend the same properly or even advise himself properly in the matter of his rights and liabilities. It is therefore necessary that sufficient publicity should be given to all these Statutes, Ordinances, Notifications, Regulations, etc., in the language or languages which are easy to understand by the people in general and copies of the same should be made available to the public in general.

203. The second feature above referred to, viz., the high cost of litigation, at least in the urban areas and the heavy court fees and process fees are a matter to be considered by the proper authorities in relation to the litigants in general. We are not particularly concerned with the same as has been observed before, because in the scheme for legal aid which we have suggested we are providing for the remission of court fees and process fees, and for taxable out of pockets as also providing for the representation by lawyers on payment to them of remuneration on the particular basis there indicated. We would, however, suggest as a remedial measure in this behalf a provision of the type which has been made in the rules which have been framed for the City Civil Court of Greater Bombay, viz., that there should be a generous remission by the State of court fees, etc., in those cases which are compromised or settled between the parties before the issues are framed or where they are proceeded with *ex-parte* or where they are withdrawn before they reach the final hearing before the Courts. If such remissions are granted, they would certainly lead to a greater disposal of the cases and the proceedings before the Courts and considerable time of the Courts would be saved as they would in any event induce the parties to compromise or settle their disputes before the hearing and final disposal of the suits or proceedings and would certainly inflict on the litigants much less burden of costs than at present.

204. The third feature above noticed, viz., the cumbrousness of procedure is a serious factor to be considered. Various measures have been suggested to us for simplification of procedure in the Courts of law. We need not dilate upon this aspect of the question in any great detail but would only indicate some of the few suggestions which have been made before us in that behalf. So far as the High Court in its Original Side is concerned, certain suggestions were made to us by the Bombay Incorporated Law Society and they were these :

(1) That in every suit filed as a long cause the Judge in Chambers or the Prothonotary and Senior Master should give directions to the parties after the service of the Writ of Summons on the defendant *inter alia* requiring the written statement or points of defence to be filed before a specified date and further requiring that both the parties to the suit do hand over each to the other the copies of documents on which they respectively rely and the documents they consider to be relevant. Save in exceptional cases, the parties should not be

permitted to put in at the final hearing those documents which are not thus disclosed. This procedure will effect a saving in the costs of discovery and inspection. It should of course be kept open to either party in case the genuineness of a document is challenged to see the original but in the majority of cases copies of documents furnished as indicated would be all that either party would ordinarily require.

(2) Under the existing Rules in regard to summary suits, on the mere filing of an appearance on behalf of the defendant, the plaintiff is obliged to take out a summons for judgment. Formerly the defendant had to take out a summons and apply within 10 days of the service of the Writ of Summons upon him for leave to defend the suit. Upon that summons the Judge in Chambers used to give leave upon certain terms as to depositing an amount in Court and as to filing the written statement and as to discovery and inspection. It is suggested that the former procedure should be reverted to and in place of discovery and inspedction the parties be directed to exchange copies of their documents and a very early date be fixed for a hearing.

(3) Under Order XXI rule 22 of the Code of Civil Procedure if no proceedings in execution have been taken to enforce a decree for two years the plaintiff is obliged to take out a notice under Order XXI rule 22 of the Code to show cause why the decree should not be executed. The costs of this notice are borne by the plaintiff. In most cases this notice is a needless formality. The defendant is fully aware of the decree that has been passed against him. In cases where the decretal amount is payable by instalments the plaintiff need not be obliged to incur the costs of the notice against the defendant to show cause why the decree should not be executed against him. If the defendant can show any cause as to why a decree of the Court should not be executed against him, it should be for the defendant to take out a notice against the plaintiff.

205. So far as the appeals are concerned under Order XLIV of the Code of Civil Procedure, a suggestion has been made that instead of the stringent provision which is made in Order XLIV rule 1 a provision should be made that the appellant should make out an arguable case before his appeal should be allowed to be filed.

206. It has also been suggested that the powers of the Small Causes Courts should be enlarged so as to embrace within their jurisdiction suits of larger denominations and more variegated types than what are permissible under the present laws and procedure. It is also suggested that summary procedure should be extended to the mofussil areas and counter-claims also should be allowed to be filed by the litigants there It is further suggested that the Judges and Magistrates should be empowered to make orders for costs against defaulting parties when miscellaneous applications are made before them. If such costs were allowed the parties would think twice before making frivolous applications before them which have only the effect of protracting the litigation.

207. As regards the Magistrates' Courts, there is a suggestion made that the whole administration of criminal justice should be overhauled and the Police Prosecutors should be relieved from the supervision of the District Magistrates. As things stand at present, the Police Prosecutor is under the supervision of the District Magistrate and convictions obtained by him are more often than not the test of his efficiency. The result therefore is that he conducts the cases before the criminal Courts more with an eye to secure convictions than to have the ends of justice met. It is therefore suggested that the Police Prosecutors should be taken away from the supervision of the District Magistrates and put under the supervision and control of appropriate officers who have nothing to do with the executive.

208. Corresponding with the suggestion relating to Prosecutors in the Districts, a suggestion has also been made in regard to the conduct of criminal prosecutions and appeals in the Courts of the Presidency Magistrates in the City of Bombay, the Courts of Sessions and Criminal Appeals in the High Court. At present Police Prosecutors who conduct cases in the Presidency Magistrates' Courts are in substance a branch of the Police Force and are under the general directions of the Commissioner of Police. It is suggested that this is unsatisfactory and that it is time to reorganise the whole scheme of criminal work, and that it may well be considered whether Prosecutors in Presidency Magistrates' Courts as also those who are entrusted with the prosecution cases in the Sessions or in appeal to the High Court should not be under the control and supervision of a Central Bureau of Prosecutions under a properly qualified head. Such a course is calculated to ensure that cases are initiated with care and continued with despatch and discretion and so conduce to less expense to the State and to the accused persons. These are some of the ways which have been suggested before us for simplification of procedure apart from the pre-trial and the conciliation methods which we shall discuss hereafter.

209. The fourth feature which has been indicated above is that of the gross delays in the disposals of cases in civil as well as the criminal Courts. We have pointed out above the various defects which obtain at present and which tend to such delays. The remedies which are suggested to avoid the same are *inter alia* that the Courts should be very stringent in the granting of adjournments. The *adjournments of course which appear to be granted particularly in the civil Courts to enable a lawyer to appear, to take instructions from his client and to file the written statement as also for other similar steps in proceedings should be reduced to their irreducible minimum. The summons should as far as possible be served not for merely appearing in Court but for the defence of the suit or proceedings. The adjournments for the convenience of the lawyers should certainly be discountenanced. The lawyers must not take up more cases than they can easily manage and should certainly entrust the cases either to their juniors or should be in a position to transfer those cases when the exigencies of the work so require, so that unnecessary adjournments may be avoided. This feature of adjournments is more to be noticed in the criminal Courts. There the

cases are adjourned so very often that not only the advocates but also the prosecution is very often embarrassed. The police officers do not have a proper adjustment of their cases before the various Courts, with the result that very often the cases are adjourned because the police and their witnesses are not present in Court. Very often the complainant or the witnesses are absent from Court, with the result that adjournments are asked for. Sometimes the Police Prosecutor himself has his hands too full and he is constrained to apply for adjournment of cases. This works a very great hardship even on the witnesses whose evidence is necessary to be led on behalf of the prosecution. This is one of the features which is responsible for respectable citizens avoiding as far as possible to serve as Panchas, because if in order to prove a panchanama their presence is necessary and their evidence is taken only after they have attended the Courts for a number of occasions, leaving aside their other legitimate work, they would certainly not be so willing to come to serve as Panchas when Panchanamas are made by the police. The same is the tale with regard to other witnesses also on behalf of the prosecution. A complainant may so far as he is concerned be interested in seeing that the accused is brought to book; not so zealous or enthusiastic are the witnesses who are called upon to give evidence on behalf of the prosecution and if they are called upon from time to time to attend the Courts and several adjournments are taken before their evidence can ever be led in the Court, it is but reasonable to expect that they would get tired and it is but human that they would find out some pretext or other to be absent from the Court. These things require to be remedied. The difficulties of such adjournments in the matter of the defence are very great. The accused who employs a lawyer on his own has got to pay the fees to such lawyer for each and every adjournment and it very often happens that a number of adjournments are asked for and considerable fees have got to be paid to his lawyer by the accused only for these adjournments before his case ever reaches hearing. This swells the costs which the accused has got to pay his lawyer and imposes an unconscionable burden on his finances.

210. Apart from these causes which we have enumerated above which lead to the adjournments of the proceedings before the Courts, there is one other cause which requires to be seriously considered in this connection. Except in the High Court and the City Civil Court for Greater Bombay in which the procedure is assimilated as far as possible to that obtaining in the High Court, the cases which are put on the boards of the Judges and the Magistrates are not taken up from day to day. One and the same Judge has got to do the miscellaneous work consisting of applications in the course of the suits or proceedings as well as the ordinary work of hearing and final disposal of suits or proceedings which are ripe for hearing. A considerable time of the civil Judges is taken up every day in such miscellaneous work. He also disposes as many as possible of the suits appearing on board that day which are *ex-parte* or which are considered to be of a very short duration so as to show disposals which are more often than not considered to be

the only criteria of his efficiency. It is only thereafter that he reaches the real work of disposing of the suits which are ripe for hearing and are contested. No doubt he takes them, once they are reached for hearing and final disposal, from day to day but it is easy to observe that with the type of work which he is doing every day of the nature above indicated, he would really find much less time to devote to this work of hearing and final disposal than what he otherwise should devote to the same. When these cases proceed from day to day in this manner all the other cases which are put on board as part-heards or as to be taken up for hearing and final disposal are shunted to some convenient date or dates with the result that the parties and their witnesses have got to dance attendance upon the Court from adjourned date to adjourned date incurring all costs and inconvenience by reason of such adjournments. So far as the Magistrates are concerned, the same is the sorrowful tale. Notices or summonses, remand applications, bail applications and what not, have got to be dealt with at the commencement of the day. Short matters which are capable of disposal in the course of the day are then taken up and then only comes the chance of the cases which are fixed for hearing and final disposal after being ripe for hearing. These cases are taken up thus for not more than two hours on an average per day and are then adjourned to convenient date or dates to be taken up in the same manner on those adjourned dates also. The result is that the hearing of these contested cases is protracted over a number of months and it is a great tribute to the capacity of these Magistrates that they are able to concentrate upon the essence of the cases and give their judgments in those cases in any consistent or co-ordinate manner dealing full justice to the evidence adduced and the arguments addressed before them.

211. The story in regard to the Presidency Magistrates in Greater Bombay is more tragic still. Before the institution of Honorary Presidency Magistrates was done away with, a number of petty cases such as those under the Motor Vehicles Act, the Bombay Police Act, the Municipal Act, the Prevention of Cruelty to Animals Act, etc. which were only punishable with fine were dealt with by the Honorary Presidency Magistrates. They were thousands in number, and the Stipendiary Presidency Magistrates had nothing to do with the same. The work of the Stipendiary Presidency Magistrates was also sought to be relieved latterly by entrusting the Honorary Presidency Magistrates cases with regard to minor offences under the Indian Penal Code, e.g., hurt, wrongful restraint, trespass, etc. It is the entrustment of these cases which, apart from other causes which were considered sufficient by the Government in that behalf, brought the institution of the Honorary Presidency Magistrates into bad odour with the Government and the Government thought it fit to abolish this institution of the Honorary Presidency Magistrates and to entrust all these cases which were dealt with by them to the stipendiary Presidency Magistrates. The result has been that even though there has been an increase in the number of Stipendiary Presidency Magistrates to 22 in Greater Bombay, the work of the Stipendiary Presidency Magistrates has increased in such

proportion as to leave very little time for them to do any serious work in their Courts. Hawkers, ordinary miscreants who come under these minor Acts above enumerated and miscellaneous persons of this type are brought in their hundreds before each Presidency Magistrate at the commencement of the day and at least two hours of the day's work of each Presidency Magistrate if not more are occupied in dealing out justice and punishments to these miscreants. Then there come the cases of remand, bail applications and the like. Then there are short cases which they deem fit to dispose of not intending to call the parties concerned therein to appear before them on more occasions than necessary. The last cases to be touched by them are the contested cases which are fixed for hearing and final disposal which are supposed to be taken up from day to day but which they can only take up for not more than two hours every day if at all they are able to do so. Even though they keep a large number of such cases on their board to avoid all possible contingencies of adjournments by reason of the police, the witnesses, the lawyers, etc., not being present or not appearing before them and asking for adjournments, there are a number of cases which are thus unnecessarily put on the boards and the parties, the witnesses and the lawyers therein concerned have got to dance attendance upon the Courts, day after day and on many an adjourned date to which they are adjourned. All this leads to gross delays and gross inconvenience and harassment to the parties which harassment and inconvenience should be by all possible means avoided. The way in which it can be avoided so far as the civil Courts are concerned is by entrusting the miscellaneous work, wherever the circumstances permit of that being done, to one particular Judge for a particular period, relegating that type of miscellaneous work to that Judge alone and leaving the other Judges free to do all work of hearing and final disposal from day to day, so that all the parties, their witnesses and lawyers know that their cases would certainly be heard if not on the particular day or days on which they appear on board, at least within a reasonable time in the order in which they are placed on such day or days when the Court has time to take them up after the previous suits on the board or boards are exhausted. The same thing can be done in regard to the criminal Courts also. The work of remand, bail applications and the other type of miscellaneous work can and should be entrusted to a particular Magistrate if the personnel of the Court so permits it to be done, leaving the contested work to be done by a particular Magistrate or Magistrates without let or hindrance. So far as Presidency Magistrates in Greater Bombay are concerned, too much stress cannot be laid on the suggestion that they require to be seriously relieved of the type of petty work which they are doing at present and which occupies them at least two hours every day on an average. It is a pity that the time of the Stipendiary Magistrates who are paid salaries of Rs.1,000 and more should be wasted in doing this type of petty work which can as well be entrusted to capable and proper Honorary Presidency Magistrates appointed in that behalf. The miscellaneous work also can be legitimately entrusted as we have indicated above to a particular Presidency Magistrate in each set of

Courts so that the other Presidency Magistrates presiding in those Courts are free and able to take up the contested work from day to day and for all the time of the day that they can spare in that behalf, so that the parties, their witnesses and the lawyers can, as they ought to, make it convenient to attend the Courts and see that the cases are disposed of with the least possible delay.

212. It has also been suggested that in the cases of criminal work, the procedure which obtains in the administration of criminal justice in England should as far as possible be adopted. There the preliminary work upto the date of the actual hearing and final disposal of the cases is done by other agencies than the Magistrates themselves, and the Magistrates are only entrusted with the work of hearing and final disposal of the contested cases. It has also been suggested that committal proceedings are not necessary and they can be done away with, because they merely result in duplication of the work. In those cases where the cases are bound to be committed to the Sessions Courts, the Magistrates should not be burdened with the work of entertaining committal proceedings but the accused should be given copies of the police papers so as to prepare himself for cross-examining the witnesses whose evidence may be led in the Sessions Court on behalf of the prosecution. It has also been suggested that there should be a restriction on the transfer applications which are very often indulged in by the parties in the criminal Courts merely for the purpose of delay. There should be a salutory check put on such transfer applications by insisting on a deposit or some security of that nature which would have the effect of testing the *bona fides* of persons applying for such transfers and would really reduce those transfer applications to their minimum. It is also suggested that even in the criminal Courts, costs of adjournments should be granted against the parties who ask for the same if the Court finds that they are in default, and that even the Government should be saddled with costs in such proper cases. It has also been suggested that section 540-A of the Criminal Procedure Code should be amended in accordance with the provisions of section 205 of the Criminal Procedure Code so as to enable the Court to proceed with the case even in the absence of a recalcitrant or a defaulting accused. It is also suggested that certain offences in the nature of Torts, as for example assault, defamation and the like, should be taken off from the category of offences under the Indian Penal Code and the parties who have their grievances in that behalf should be relegated only to civil litigation in that behalf. It is lastly suggested that all cases which are committed to the Sessions Court should be scrutinized by a competent authority like the Public Prosecutor or the Government Pleader or the Advocate General who should apply their mind really to the position and enter *nolle prosique* in proper cases in a larger measure than at present done.

213. We may also in this connection refer to the necessity of remedying unnecessary delays which are caused in the execution of process, by tightning up the procedure with regard to the services of the same by the bailiffs and the officers of the Court, as also to the necessity of issuing

nstructions to the officers concerned to supply extracts or copies of public documents such as records of rights, etc., with the least possible delay to the applicants for the same so as to avoid unnecessary delay in hearing of cases in the respective Courts.

214. The last feature indicated above was the distances of the Courts from the litigant and the manner in which the Judges were conducting the cases before them. It has been suggested in this behalf that there should be circuit Courts or peripatetic Courts so that justice may be taken to the door of the poor and should be within easy reach for them. This suggestion, however, may not be very easy to adopt for the simple reason that it is not possible to have court houses or facilities for a library etc. at each and every place where the Court may be expected to go in its circuit, and therefore it has been urged by some witnesses that it would not be convenient to have such peripatetic Courts or circuit Courts. It has also been suggested by Mr. Justice J. C. Shah that Judges should sit in Court from 11 a.m. to 5 p.m. except of course for the lunch on interval and he has deposed before us that if this was done the work of the Courts in the mofussil areas would be considerably accelerated. He has also suggested that the Judges should apply their mind to the cases which are conducted before them from the very commencement, should ask the advocates to open their cases and control the proceedings before them very closely so that there is no possibility of irrelevant or unnecessary evidence being led before them. The Judges and the Magistrates should as indicated before hear the suits and proceedings before them from day to day so that all the impressions which the demeanour of witnesses etc. can create upon them would be fresh upon their minds, time of the Court would not be wasted in unnecessary repetitions and dilatoriness which would normally be the result of taking up cases on several adjourned dates one distant from the other by a considerable period of time, and that they would be able to devote a concentrated attention to the facts and circumstances of the cases before them. The Judges or Magistrates should as far as possible immediately deliver their judgments, only reserving for later date such judgments as require a considerable time and labour by way of marshalling of the facts or investigation into authorities on points of law.

215. In this connection we may also refer to another suggestion which has been made, and that is that there should be a more frequent inspection of the work of the subordinate Courts so as to scrutinize the manner in which the work of the subordinate judiciary is done and ways and means should be devised for more speedy and expeditious work before them. We may also add that there are no facilities at various places for stenographers and also for copying work which is necessary to be done in order that the copies of the judgments and the relevant documents may be given to the litigant who applies for the same so as to enable him to file his appeal or application before the appellate

tribunals. Mr. Raut, the Superintendent of the Yeravda Central Prison complained before us that there were various instances in which even copies of the judgments pronounced by the criminal Courts were received after the convicts were released having served out their sentences. This is, in our opinion, a state of affairs which requires to be immediately remedied, and copies of the orders and judgments etc. should be made availabe to the litigants immediately or within a very short time after the same are pronounced and the necessary provision for stenographers and typists and copying clerks should be made wherever it is necessary for the purpose.

216. Apart from the remedies suggested above, a few more suggestions have been made which would have the effect of rendering justice more easily accessible to poor persons and persons of limited means. It was suggested that pre-trial methods should be adopted in each and every Court. The presiding Judge should in all cases try to bring the parties together at a particular stage either at the time when issues are framed or even a little before that, after the pleadings are closed so that he should try to eliminate the points of dispute by examination of the parties and should even try to see if the parties would not adjust their differences before him. If such pre-trial methods were adopted, it is suggested that considerable work of the Court would be lessened and if the parties did not arrive at an adjustment of the disputes between them, the attention of the presiding Judge would then be focussed on only the points of dispute which would be left over to be tried by him. This method would, if it were possible to work it to perfection, result in a considerable curtailment of the work of the Court, would also lead to the adjustment of the disputes between the parties in many cases and would also have the effect of less inconvenience to the parties and less substantial work for the Courts to go through. As against this suggestion, it was pointed out that if the presiding Judge himself adopted these pre-trial methods, the result would be that there would be a considerable waste of time, there would be a duplication of procedure and the parties might, also feel that the Judge was putting too much pressure upon them and would even be prejudiced against them. There is, however, no justification for such apprehension at all. The germs of the per-trial methods are to be found in the provisions of Orders X, XI and XII of the Code of Civil Procedure and it is always open to the presiding Judge at the proper time to apply his mind to this aspect of the question and see if the trial before him could not be curtailed in the manner indicated above. The parties need not have any apprehension as regards the presiding Judge being prejudiced against them if on an examination of the parties before him he tries to curtail the scope of the inquiry before him by trying to adjust as far as possible the differences between them. We, therefore, suggest that even though the parties might, if they were so disposed, not relish these methods of pre-trial and the curtailment of the scope of the inquiry before the presiding Judge, the presiding Judges should exercise their powers under Order X, XI and XII of the Code of Civil Procedure in as large a

measure as they possibly can and try to curtail the scope of the inquiries before them. There is no question of misunderstanding, therefore, of the presiding Judges in this behalf and if there is a ground of apprehension on this score, the matter may be facilitated by a circular being issued by the High Court in that behalf that before the issues are framed or at or about the time that the issues are framed the presiding Judges should in all cases try the pre-trial methods by examination of the parties and curtailment of the scope of inquiry by adjustment of the differences between them as far as possible.

217. Apart from pre-trial methods suggested above, it was also suggested that methods of conciliation should be adopted before the matters are actually heard and finally disposed of by the presiding Judges. In this behalf various methods of conciliation have been suggested and they are :

(*i*) that the Panchayats wherever they exist or Panchas specially appointed in that behalf should act as conciliators.

(*ii*) that conciliation Courts should be established to go into the disputes between the parties in the first instance and it has been further suggested that a certificate as regards the failure of these conciliation proceedings should be made a condition precedent to the filing of a suit or the initiation of the proceedings in Courts by the litigants.

It has been urged on the other hand that it would be difficult to find impartial Panchayats of this description who would try to conciliate between the parties in this manner. And even as regards the conciliation Courts, it would mean merely a duplication of the whole procedure with the result that the purpose of curtailing the amount of litigation between the parties would not be achieved. This procedure, it is suggested, would not necessarily lead to adjustment of disputes or differences between the parties who might, as they do in the conciliation proceedings in the matter of industrial disputes, go through a farce of conciliation. They would not really adjust or compose their differences and it would be merely one more wheel in the chariot as it has been so described. Having regard to the temperament of the litigants here, it is stated that these conciliation proceedings would not serve any useful purpose whatever. We appreciate the difficulty which has been put forward in regard to this measure for conciliation. It would be really difficult to find Panchayats or Panchas who would enjoy the confidence of the litigating public in the manner contemplated and who would be able to really enforce their decisions on the disputing parties. The very idea of conciliation is that the parties are to be made to adjust their differences. If these differences are adjusted, the result would be an agreement entered into by and between the parties regarding the result of the conciliation and the obtaining of a decree from the Court in accordance with the terms of the agreement thus arrived at between them. There would be, however, no sanction behind these proceedings of conciliation. If the parties did not think it proper to adjust their differences in this manner, the hands of

the Panchayats would be tied down and they would not be able to force the parties to come to any reasonable adjustment of their differences. Beyond the exercise of a moral pressure, therefore, these Panchayats or Panchas would not be able to do any effective work. The position is more difficult still in regard to the establishment of conciliation Courts or conciliation Boards. Very few competent people would be found who would carry on these conciliation proceedings with any great prospects of success. There is certainly a possibility of finding out retired Judges or retired Magistrates or retired lawyers or even public spirited citizens of certain status and education who might be found capable of conducting these conciliation proceedings. The remedy however is not such as would be sufficient for the purpose. Even such conciliators would find it difficult to do anything more than exercise moral pressure of the nature indicated above and there being no sanction behind what steps they might take in the matter of the conciliation, the parties, if they are minded to fight out their disputes and carry on their litigation, would never listen to them, however, influencial they might be. In the result, therefore, we have come to the conclusion that even though some measure of success may follow the establishments of either the Panchayats or the Panchas in the village areas and the establishment of conciliation Courts or conciliation Boards in the district towns, no particular useful purpose would be served thereby. Not much reliance can therefore be placed upon these measures as conducive to the purpose sought to be achieved.

218. The question of entrusting the work of adjudicating minor disputes or petty work—civil or criminal—to the Village Panchayats is, however, one which requires serious consideration. Under the Bombay Village Panchayats Act, 1933, and the Amendments incorporated therein in 1939 and 1947, the Legislature has made a provision for the establishment of Nyaya Panchayats, and these Panchayats are invested with certain powers to try civil suits as well as criminal offences of a petty nature. So far as civil suits are concerned, they are suits on money due on contracts, not affecting any interest in immoveable property, suits for the recovery of moveable property or for the value of such property, suits for compensation for wrongfully taking and injuring moveable property, where the amount or value of the claim does not exceed twenty-five rupees. With the consent of both the parties suits of the nature above described, but the value of which does not exceed one hundred rupees can also be tried by the Nyaya Panchayats. As regards the criminal matters, there are several offences under the Indian Penal Code, the Cattle Trespass Act, 1871, the Bombay District Police Act, 1890, the Bombay District Vaccination Act, 1892, the Bombay Primary Education Act, 1923 and the Bombay Prevention of Adulteration Act, 1925, which are made cognizable by the Nyaya Panchayats. We suggest that if the Nyaya Panchayats of this nature are established in the mofussil areas and if their jurisdiction in the matter of civil suits and criminal offences of the nature above described is further extended in the light of the experience gained of the working of these Nyaya Panchayats it would have the effect of bringing justice to the door of the

poor persons and persons of limited means and would also have the effect of reducing the cost of the litigation. These measures would certainly render justice more easily accessible to the poor persons and persons of limited means.

219. The above are measures which it has been suggested should be adopted amongst others for the purpose of rendering justice more easily accessible to poor persons and persons of limited means. As we have observed before, the remedial measures of the type suggested above would involve an inquiry on a larger scale than what is within the scope of the terms of our Reference and would also involve the consideration of the changes and modifications in the Laws and Procedure which are laid down in the Central and the Provincial Legislation. We would, therefore, only recommend for the consideration of Government and the authorities concerned including the High Court as to what steps they would take in order to carry out the above suggestions either by way of undertaking suitable legislation in that behalf or much better by appointing a separate Committee to devise ways and means to remedy the defects noticed above. The Civil Justice Committee made its Report in 1925 and since then no attempts have been made either by the Central Government or the Provincial Government in this behalf and in our opinion it is high time now that proper steps were taken by the Government to consider the suggestions which we have tried to summarise above.

PART VI.

Institutions Engaged in the Work of Legal Aid.

220. While discussing the existing provisions for legal aid in the Province of Bombay, we pointed out that there were unofficial agencies for rendering legal aid and advice in the shape of the Bombay Legal Aid Society and the other Legal Aid Societies which were existing in Poona, Ahmednagar, Nasik, Dharwar and Bijapur. In this connection, the Bombay Legal Aid Society deserves particular mention.

Bombay Legal Aid Society.

221. The Bombay Legal Aid Society was registered as a Society under the Societies Registration Act, 1869, in the year 1924 with the following objects :

(*a*) To undertake, promote and develop legal aid work, to encourage the formation of new legal aid organisations wherever they may be needed and to co-operate with the judiciary, the bar, and all organizations interested in the administration of justice so as to make justice accessible to the poor and to reduce the costs of litigation ; to render legal aid, gratuitously, if necessary, to all who may appear worthy thereof and who are unable to procure assistance elsewhere,

(*b*) To give legal advice and legal assistance in negotiations and litigation after due enquiry to poor persons without cost to them or at a minimum cost which they can afford in matters where no other assistance is available,

(*c*) To provide lawyers (pleaders, advocates or attorneys) to the poor, in cases where lawyers are necessary and procure proper representation of their case before a Judge, a Magistrate or other Officer,

(*d*) To undertake the cases both civil and criminal of poor persons so as to make justice accessible to them,

(*e*) In furtherance of the objects of the Society its funds may be expended in paying or advancing money to poor litigants to pay Court and other fees and disbursements necessary for the conduct of litigation or other proceeding necessary for the purpose of conducting litigation or otherwise to obtain justice, and

(*f*) To do all such other things as are incidental or conducive to the attainment of the above objects or any of them.

222. The membership of the Society is open to lawyers and laymen alike. The annual fee for membership is Rs. 2. The Society has at present 192 members on the roll of whom 61 are Advocates (O.S.), 30 are Attorneys-at-law, 40 are lawyers who practise in the Presidency Small Cause Courts and Magistrates' Courts and 61 are laymen.

223. Pursuant to its objects, the Society has been rendering legal aid service to poor persons who apply to the Society for legal aid.

No charge is made either for legal aid or legal advice. The tests applied for eligibility for legal aid are : (1) whether the applicant has a *bona fide* case or defence ; and (2) whether the applicant is too poor to pay the fee of the lawyer. If the Committee of the Society is satisfied in regard to these matters, the applicant is assigned a lawyer from among the lawyer members of the Society. If the applicant is too poor to pay the Court fees, the applicant is assisted in making a petition to the Court to be allowed to sue or defend in *forma pauperis*. Negotiations, conciliation and only in the last resort, the court of law, are employed to obtain relief for the deserving poor.

224. The Society handles all types of cases and provid s free legal aid in all the Courts in Bombay. It has, since its registration, received over 1,600 applications from poor persons requiring legal aid in Courts. Besides the above, it has been consulted by and has given free legal advice to a very large number of applicants. In order to avoid inconvenience to poor persons who may be in need of legal aid or advice but who are unable to leave their daily wo k for approaching the Society for legal aid, the Society deputes one of its members to attend at the several Labour Welfare Centres in the evening, to advise such poor persons. The Society maintains contact with other social service agencies in Bombay. Persons requiring legal aid and advice are referred to the Society, *inter alia* by the Government of Bombay, the High Court and other Courts (both civil and criminal) Municipal and Port Trust Departments, social service agencies, members of the profession and of the public.

225. When an applicant has a matter that has to be litigated in a Court outside Bombay, the Society endeavours to get the applicant into touch with a lawyer practising in the place where the matter is to be litigated and willing to act for the poor person without making any charge for his services.

226. The Society has been instrumental in promoting legal aid societies *inter alia* at Poona, Ahmednagar, and Dharwar, besides promoting legal aid in other places.

227. The Society has published a pamphlet "Justice and Poor" which is a factual study of the incidence of costs of litigation in the Province of Bombay. A Provincial Legal Aid Conference was held in Bombay under its auspices in April 1949. It was inaugurated by the Honourable Mr. B. G. Kher, Premier of Bombay and presided over by the Honourable Mr. Justice J. C. Shah. The proceedings of the Conference have been published in book form by the Society. By this and other means, it strives to interest the legal profession and the public in the legal aid movement in India.

228. In addition to assisting poor persons with free legal aid and advice as aforesaid, the Society has made representations from time to time, both to the Courts and to the Government for making amendments in the practice and procedure of the Courts, and amending such provisions in the Acts, as operate as a hardship on poor persons.

229. The Society was instrumental in getting the property test laid down by Order XXXIII, rule 1, of the Code of Civil Procedure raised, so far as the Original Side of the High Court is concerned, from Rs. 100 to Rs. 300, and from Rs. 300 to Rs. 500. It succeeded in getting the said provisions applied to petitions for Probate of the Will or Letters of Administration to the estates of deceased persons, so as to enable the poor petitioner to defer payment of the Court fees and estate duty, until after the grant of Probate or Letters of Administration, the same being charged on the estate.

230. The Society made a representation to the Government of Bombay, pointing out the hardship caused owing to the stringent provision of section 13 of the Bombay City Land Revenue Act, 1876. The said section was amended accordingly by the Bombay Act, 49 of 1947, so as to remove the hardship.

231. Besides the membership frees, the Society receives an annual grant-in-aid of Rs. 300 only from the Government of Bombay, and donations from some of the Presidency Magistrates from the poor boxes maintained in their Courts, and an annual donation of Rs. 300 made by Sir Ness Wadia, K.B.E.

232. The Society has a programme, besides giving legal aid and advice to poor persons, of taking measures to bring about reforms in the law and the legal procedure, so as to render justice more readily accessible to the poor.

Maharashtra Legal Aid Society.

233. The Maharashtra Legal Aid Society was registered under the Societies Registration Act, 1860, in October 1948 with the objects which are enumerated above as the object of the Bombay Legal Aid Society.

Ahmednagar Legal Aid Society.

234. The Ahmednagar Legal Aid Society was established in about the middle of the year 1947 also with the same objects as have been mentioned above in connection with the Bombay Legal Aid Society. The Secretary of the Bar Association, however, wrote on the 21st July 1949 to say that it is to be admitted with great regret that the Society itself has not done any work.

Dharwar Legal Aid Society.

235. The Dharwar Legal Aid Society was established with the following objects :

(*a*) To render legal aid gratuitously if necessary to all who may appear worthy thereof and who are unable to procure such assistance.

(*b*) To spread knowledge of law, legal rights, civil liberties, etc., among the general public by lectures, pamphlets or otherwise.

(c) To promote the study of law and its principles and to give expression to the opinion of the Society about pieces of legislation, legislative orders or rules.

(d) To study the disabilities and grievances of the public caused by law and law Courts and to seek redress.

(e) To co-operate with the Judiciary, the Magistracy, the Bar and all organisations interested in the administration of justice so as to make justice accessible to the poor and to reduce the cost of litigation. And

(f) To do other things as may be incidental or conducive to the attainment of the above objects.

The Society has a membership of about 14 or 15 members only and not much work by way of legal aid can be predicted of the Society so far.

236. We have not been furnished with the constitution of the Nasik Legal Aid Society and Bijapur Legal Aid Society, but we presume that the objects must be the same as we have noted above.

237. As we have observed, the Bombay Legal Aid Society is the only society which has rendered yeoman service to the cause of legal-aid and advice. The other Legal Aid Societies which have been started on its model have not succeeded unfortunately in doing any service worth the name to the cause of legal aid and advice.

238. These Legal Aid Societies do not receive any encouragement or financial aid from the Government except in the case of the Bombay Legal Aid Society which receives a grant of Rs. 300 per year from the Government as stated above. The Bombay Legal Aid Society made a representation to the Government in August 1948 by addressing a letter to the Assistant Secretary to the Government of Bombay, Legal Department, in connection with the grant-in-aid to the Society. It pointed out there that for want of financial means the Society was not in a position to expand the scope of its activities in the matter of the assistance to be rendered to the poor and submitted that it was necessary to employ at least one full-time worker, two part-time workers and one shorthand typist and filing and record clerks and two office peons if the work of legal aid and advice which it rendered was to be satisfactorily rendered. It also pressed its needs for office premises and a telephone and the total estimated costs were submitted by it at about Rs. 8,600 every year apart from the capital expenditure of Rs. 1,000 for a typewriter, furniture, cupboards, etc. To this appeal of the Bombay Legal Aid Society, a reply was sent by the Government that the Bombay Legal Aid Committee was appointed and it would consider the question of granting the necessary relief to the Society. The recommendations on the question of encouragement and finance to the Societies or institutions engaged in the work of such legal aid constitute one of the terms of reference to the Committee. We have heard the representatives of the Bombay Legal

Aid Society and their evidence before us goes to show that the present needs of the Society if it is to satisfactorily discharge its functions are in the neighbourhood of Rs. 9,000 a year.

239. We pointed out to the representatives of the Bombay Legal Aid Society that if the State sponsored the scheme of the legal aid as we were suggesting there would come into existence so far as the Greater Bombay is concerned and which is mainly catered for by the Bombay Legal Aid Society as many as 7 Legal Aid Committees who would be catering to the needs of the poor persons and persons of limited means in Greater Bombay. We, therefore, asked them what would be their position and utility in the new set up which might come into existence, and we had the following programme of work of the Bombay Legal Aid Society furnished by them to us :—

(1) Until the full functioning of the Scheme that the Legal Aid Committee appointed by the Government of Bombay may recommend, the Society will continue to give legal aid and advice as it has been doing among the poor during the last over 25 years. If the Government of Bombay, on the recommendations that the Legal Aid Committee may make, makes the requisite increase in the annual grant of Rs. 300 only to which its aid to the Society is at present confined, the Society will be able to extend its services among the poor and persons of moderate means.

(2) In conformity with the object of the Society, viz., to co-operate with the Bench, the Bar and all other organisations interested in making justice more readily accessible to the poor, the Society will be prepared to offer its whole-hearted co-operation to whatever machinery for legal aid and advice that may be set up by the Government (on the recommendations of the Legal Aid Committee) and either as a part of the said machinery or independently of it, as may be desired.

(3) Apart from the co-operation above referred to, the Society will (within the limits of its resources) continue to work *inter alia* for—

(*a*) the formation of Legal Aid Societies on the lines of the Bombay Legal Aid Society wherever necessary ;

(*b*) bring about amendments and improvements in the substantive and procedural laws and rules and regulations having the force of law in the country, so as to lessen or obviate hardships wherever they occur ;

(*c*) composing disputes and differences, so far as possible, through conciliation and if both sides agree, through arbitration ;

(*d*) making the public better acquainted than at present with the laws and regulations by bringing home to the masses a knowledge thereof by adopting the necessary ways and means including issue of literature for the purpose ; and

(*e*) rendering such form of legal aid as may be necessary.

240. This is really a commendable point of view and we are of opinion that all necessary financial aid should be given to the Bombay

Legal Aid Society at least up to the time that a Legal Aid Scheme as suggested by us is brought into operation in Greater Bombay. That financial aid should be commensurate with the needs of the Bombay Legal Aid Society and we are of opinion that the grant of a sum of Rs. 9,000 as demanded by the Bombay Legal Aid Society will not be in any manner whatever beyond the necessities of the situation. We, therefore, recommend to the Government that the Bombay Legal Aid Society should be given as generous a grant as it is possible to give within the limit of Rs. 9,000 which they have modestly set to their requirements.

241. Apart however from the service rendered during the transitory or intermediate period before the scheme for legal aid is brought into operation in the province, we are of opinion that the Bombay Legal Aid Society and the other legal Aid Societies would serve a very useful purpose in the matter of rendering legal advice even after the scheme for legal aid as suggested by us is brought into operation. Wherever such legal aid Societies exist either in Greater Bombay or in the mofussil areas they would be consisting of self-less lawyers who have offered their services in the cause of legal aid and the lawyers who are the members of such Legal-Aid Societies would be best calculated to render legal advice to poor persons and persons of limited means. We would, therefore, recommend that these Legal Aid Societies wherever they exist should not be disbanded, that they should be given the necessary grants-in-aid in order to ensure their furter existence and they should be constituted agencies for the purpose of rendering legal advice to poor persons and persons of limited means. Their service in the cause of legal advice would be invaluable. They would be organisations which have been established for the purpose of rndering legal aid to the poor and the whole machinery could be utilised by the State for more efficiently giving legal advice to the poor persons and persons of limited means than can be done in the scheme for legal advice which we have suggested above. These legal aid societies would also be proper vehicles for the information as regards the legal aid which the State is giving to the poor persons and persons of limited means. They would also make valuable suggestions to the State in the matter of reformation of the laws and procedure which may particularly press hard upon such persons. We, therefore, recommend that their existence should be continued and the necessary grants-in-aid be given to them so that they might continue to render the useful services which they have hitherto been rendering to the cause of the legal aid.

PART VII.

Legal Aid Fund.

242. In order effectively to sponsor a scheme for Legal Aid Fund of the type which we have suggested above, it would be necessary to provide funds in a large measure. The main source of this finance would be certainly the State itself and considerable amount would have to be provided by the State in its budget for the purpose of rendering such legal aid. There are, however, other Bodies and Organisations which also might be considered in this connection and contributions or donations could be obtained from them. The Municipal Corporations, or the Municipal Boards or the District Local Boards could be called upon to contribute some amount towards the legal aid fund, as it is one of the functions which these local bodies might be expected to perform out of the rates and taxes which they recover from all the ratepayers within their respective areas. There are Merchants' Chambers. There are Associations and Unions of Merchants concerned in trade in particular commodities. There are Stock Exchanges, Bullion Exchanges, Cotton Merchants Associations and also Trade Unions of workmen and several other bodies of this nature who could also be called upon to make their contributions or donations towards the cause of legal aid. There are further public charitable trusts having surplus income of not less than Rs. 1,000 per month after meeting the current expenses and perpetual commitments, and they as well as various other charitable institutions might also be called upon to make their contributions or donations towards the cause of legal aid. Besides these contributions and donations, there would be some amount recovered by the Legal Aid Committees by way of costs which are awarded to assisted persons against their unsuccessful opponents. These costs when recovered would, under the scheme which we have put forward belong to the legal aid fund and would form part of the same. There would also be contributions made by partially assisted persons in the proportion of the legal aid which is rendered to them, by way of the instalments of income as also the contributions of capital owned by them over and above the particular limits. There would also be the fees and charges paid by the applicants for legal advice which however meagre they may be, would total up to a considerable amount.

243. We, therefore, suggest that the legal fund should consist of:

(1) Contribution of the Provincial Government,
(2) Contributions and donations from Local Bodies, Associations of Merchants and Trade Unions, Public Charitable Trusts and Charitable Organisations,
(3) Costs recovered from unsuccessful opponents,
(4) Contributions by partially assisted persons, and
(5) Fees received from the applicants for legal advice.

244. This legal aid fund would be in charge and control of the Provincial Legal Aid Committee and the Provincial Legal Aid Committee would on the statements and budgetery estimates furnished to

it by the various Legal Aid Committees situated in Greater Bombay and in the mofussil areas allocate unto the respective Legal Aid Committees the amounts out of the fund in accordance with the requirements of the Legal Aid Coimittees. The Provincial Legal Aid Committee would every year transfer particular amounts thus determined to the respective Legal Aid Commttees to be utilised by them in the manner and according to the procedure which we have indicated while discussing the constitution and finances of the respective Legal Aid Committees. There would be an annual audit of the accounts of the legal aid fund in addition to the audits provided by us of the accounts of the other Legal Aid Committees. There would be disbursements out of the legal aid fund to be made by the respective Legal Aid Committees for providing for the out of pockets as also the lawyers' remunerations as suggested by us in the earlier part of this report.

245. A suggestion was made before us that a legal aid tax should be levied on the members of the legal profession, the bigger land-holding class, charitable institutions, commercial bodies, etc. The idea of levying the tax of this nature, however, does not appeal to us. We would rather leave it to the voluntary contributions and donations to be made by all these bodies indicated above ; and we are quite confident that such voluntary contributions would be more meritorious and effective in serving the cause of legal aid than a compulsory legal tax of the nature suggested. As a matter of fact, we may point out an instance of such a donation which we came across in the course of our inquiry. A senior member of the Appellate Side Bar of the High Court towards actually sent us his cheque for Rs. 500 as his contribution the cause of legal aid thinking that the acceptance of such contribution for legal aid was well within our jurisdiction. While appreciating the sentiment which actuated the gentleman in sending this contribution of his, we had to return the cheque back to him, and to request him to send it as his contribution to the legal aid fund when established. We are sure that many more contributions of this nature would be forthcoming from the members of the legal profession as also from the other bodies who are in a position to make such contributions or donations and we trust that there would be no necessity at all of levying a legal aid tax as suggested.

PART VIII.

Informing the Public of Legal Aid Facilities.

246. It was suggested to us by some of the witnesses that whatever scheme for legal aid and advice may be sponsored by the State should be given proper publicity at all times so that those whom it is intended to benefit might have no difficulty in knowing that such legal aid and advice is available to them and also in approaching the proper agencies and organisations for obtaining the same. Even though the State might sponsor the scheme for legal aid and advice, it would not have the desired effect of benefitting the poor persons and persons of limited means for whose benefit the same is designed, unless and until these persons were in a position to know that such a scheme for legal aid and advice existed and also knew what were the agencies or organisations whom they should approach in that behalf. It is therefore necessary to give a wide publicity to these provisions for legal aid and advice. We therefore recommend that, so far as civil litigation is concerned, a slip containing information, that there is a Legal Aid Committee attached to the particular Court which might be approached for legal aid by poor persons or persons of limited means at a particular place and at a particular time, should be attached to each and every summons or process which might be issued by the Court. We also recommend that in criminal cases such a slip should be attached to each and every notice or summons or warrant as the case may be so that the person on whom such notice or summons or warrant is served would be in a position to know that there is a Legal Aid Committee which he could approach if need be. Apart from the above provisions we also recommend that in each and every police station where persons arrested are brought, each and every Magistrate's Court where persons are tried and convicted as also committed for trial to the Sessions Courts and in each and every Sessions Court where persons are convicted of the offences with which they have been charged, there should be a provision for furnishing to the arrested or the accused or the convicted persons information as regards the existence of the Legal Aid Committee attached to the particular Court or Courts concerned and the possibility of the party approaching the same for legal aid and advice if the exigencies of the situation warranted the same. As further publicity we recommend that apart from furnishing of such slip or information to the individuals concerned a wide publicity should be given by the State to these measures for legal aid and advice by publishing them broadcast under the aegis of the Director of Publicity and by the issue of pamphlets to be distributed free amongst the public, advising them of these measures of legal aid and advice. There should also be notices of these measures for legal aid and advice put up on the notice boards in each and every Court of the Civil Judges as also of the Magistrates before whom civil and criminal litigation is conducted. A similar publicity should be given to these measures for legal aid and advice as a matter of fact in all the Administrative and other Tribunals which we have

mentioned above as Tribunals in which legal aid and advice should be given to the poor persons and persons of limited means as also in the various Labour Welfare Centres and Public Hospitals. As regards the jails to which the undertrial prisoners as well as convicted persons are sent, the Jail Superintendents should also be asked to bring to the notice of the parties concerned that there are provisions for legal aid and advice being rendered to them ; the Jail Superintendents should enquire of the undertrial prisoners in particular whether they might require legal aid and the Jail Superintendents should direct all such persons to the Legal Aid Committees working in the respective areas for the purpose of obtaining legal aid and advice.

PART IX.

Steps to be taken by Government for implementing the suggestions.

247. In what we have recommended above, we have put forward a scheme for legal aid and advice which is in our opinion absolutely necessary to be sponsored by the State if the need for legal aid and advice has got to be adequately satisfied. It has, however, been urged that even the implementing of this scheme for legal aid, as it has been put forward by us, would involve a considerable expense to the State and would inflict upon the Exchequer a very considerable burden. It has been urged that even though it might be an ideal thing to sponsor a scheme of legal aid and advice in the manner suggested we must take into account the practicability or otherwise of the whole scheme having regard to the financial obligations involved. It was urged that under the present circumstances of the State and having regard to the priorities which various schemes should enjoy, the scheme for legal aid and advice should stand much lower down on the list. The problems which the State has got to face by reason of the partition of the country, the refugee and the rehabilitation problems, the merger of States, the programme of prohibition and the urgent necessity of giving education and medical relief in preference to any legal aid and advice should all be taken into consideration. Housing has got top priority allotted to it, then come education and medical relief. Legal aid and legal advice would come later still. It has, therefore, been suggested that the State should not undertake any ambitious scheme of legal aid, at least not for th present and the State should make a very modest beginning, if at all, in the matter of rendering legal aid and advice to poor persons and persons of limited means. It was, therefore, suggested that the State should begin with particular areas and particular classes inhabiting those areas. An alternative suggestion was made and it was that the legal aid scheme also should take into account the priorities of certain classes of cases and certain classes of the population and should be undertaken first in certain classes of cases only and thereafter extended to certain classes of people to be served.

248. We do not countenance the idea of only certain districts or certain areas being taken up as the areas to be served in the first instance as and by way of experiment. It would be an invidious distinction to make between areas and areas. The needy litigants exist in all the areas alike and to select particular areas even for the initial stages of the grant of such legal aid and assistance would be favouring particular areas at the expense of the others.

249. If the State does not find it convenient or expedient to sponsor the scheme for legal aid and advice in its entirety as we have suggested above, we would recommend that a beginning should be made in any event in the matter of criminal litigation and legal aid and advice should

be given in the manner indicated by us to all persons who come within the category of poor persons and persons of limited means in all the criminal Courts in the Province. After these persons who have got litigation in criminal Courts are catered for, the next in order should be the persons belonging to the Backward Classes who should be granted legal aid and advice in the manner suggested by us either by the employment of full-time workers or by granting them legal aid and advice through the instrumentality of the lawyers who would be assigned by the Legal Aid Committees concerned out of the panels maintained by them. After these Backward Classes the next in order should be the parties concerned in the Tenancy Tribunals, the Workmen's Compensation cases and the Industrial and Labour Courts, as they are apart from those persons who are concerned in the Criminal Courts and the Backward Classes the next group of persons who require to be granted legal aid and advice at the expense of the State. Next we have the cases of persons who have litigation in civil Courts and who come within the category of poor persons deserving full legal aid to whom the Legal Aid Committees would grant the certificates of full legal aid at the expense of the State. The last in order of priorities to be catered for by the scheme for legal aid and advice would be the persons of limited means who would in proportion to their means and in the measure of the legal aid actually granted to them would have legal aid and advice rendered to them in their litigation before the Civil Courts.

250. We would, therefore, in the matter of implementing all our suggestions for legal aid and advice, lay down in the event of the State not being able to make budgetary provision for the full scheme of legal aid and advice which we have suggested above, the following to be undertaken in the order of priority mentioned below :

(1) All litigation or proceedings in criminal Courts,

(2) Backward Classes,

(3) Cases before the Tenancy Tribunals, the Workmen's Compensation Courts and the Industrial and Labour Courts,

(4) Fully assisted persons in civil Courts, and

(5) Partially assisted persons in civil Courts.

251. We hope and trust that the State will find its way to secure to the poor persons and persons of limited means as far as possible legal aid having regard no doubt to its commitments in order of the priorities above mentioned.

252. We may point out that in England, following upon the Rushcliffe Committee's Report, a Bill named the Legal Aid and Advice Bill was introduced into the Parliament and was passed on the 30th July 1949. It is now the Legal Aid and Advice Act, 1949. We would urge upon the Government the necessity of enacting a similar measure here to implement the recommendations made by us in our Report incorporating therein as many of the recommendations as could possibly be done having regard to the commitments and in the order of priorities above indicated.

253. We would also suggest that pending the enactment of the legislation as above, the Government should by administrative orders and notifications in that behalf give effect to as many of our recommendations as it can possibly do in order to remove the handicaps of the poor persons and persons of limited means and give them as much relief as possible during the intermediate period.

254. We would finally suggest that instead of "poor persons" and "persons of limited means" a nomenclature should be adopted describing these persons as "Assisted Persons" to be divided of course in two categories, viz., (1) fully assisted persons and (2) partially assisted persons. This nomenclature would have the desired effect of avoiding the stigma of these persons being called either paupers or poor persons or persons of limited means. We also recommend that for facilitating the work of the Courts, all pleadings, processes and decrees in cases or proceedings of assisted persons should be marked as "Assisted Litigation" or designated by some such nomenclature.

BOMBAY : 31st October 1949.

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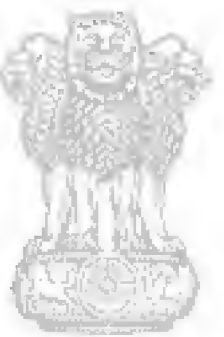
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POST-SCRIPT :—

"The members of the Committee wish to place on record their gratitude to the Chairman for generally guiding their deliberations and in particular for taking solely upon himself the task of drafting this report and thus giving final shape to the Committee's conclusions."

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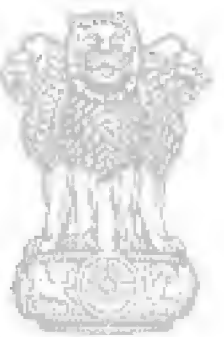
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SUMMARY OF RECOMMENDATIONS.

Part I.

Equality before law is one of the fundamental principles which has been given concrete expression in the constitution of civilized democratic States including the constitution of Free India. In an ideal sense therefore the State must accept the obligation of providing at its cost legal aid and assistance to poor persons, to persons of limited means, and to persons belonging to the Backward Classes in civil and criminal proceedings which they may be called upon to prosecute or defend in order to secure equal protection of law to all its citizens. (10-26).

Part II.

The existing provisions for legal aid, statutory and otherwise, in the Province of Bombay are utterly inadequate and unsatisfactory and require to be extended further in their nature and scope if the problem of legal aid is to be tackled in the right way. (47).

Part III.

Scheme for Legal Aid.

(i) True Scope and Extent of Legal Aid.

(1) In the civil cases court fees and process fees must be remitted by the State in cases of persons who are certified by the Legal Aid Committees as deserving full legal aid. Where partial legal aid is certified, remission of court fees and process fees should be in the same proportion. (52).

(2) Out of pocket costs which are taxable should be similarly provided for by the State in the scheme of legal aid. (52).

(3) Similarly Bhatta charges of witnesses who are examined before the Court, or whose attendance before the Court has been certified by the Court to be necessary, should be allowed by the State as out of pocket expenses for the purpose of legal aid. Expert witnesses should not be summoned without the sanction of the Legal Aid Committee. (52).

(4) Certified copies of records of rights or documents from the registry should be supplied free of charge on a certificate from the lawyer assigned by the Legal Aid Committee. Typing charges should be remitted in cases where the typing work has been done in the office itself, and in other cases such charges should be allowed as out of pocket on a certificate in that behalf from the lawyer assigned by the Legal Aid Committees. (52).

(5) *Appellate Court.*—Court fees and costs for issuing notices as also the costs of printing judgments and appeal memos should be remitted. (53).

(6) The translation charges should also be remitted if the translation work has been done through Government agency. In other cases, they should be allowed as out of pockets on a certificate being granted by the lawyer assigned by the Legal Aid Committee. The costs of preparation of the appeal paper book would stand on the same footing as the court fees and the charges of issuing notices. (54).

(7) Certified copies of judgments and decrees should be supplied free of charge. (54).

(8) Similar provision should be made in the case of second appeals and civil and criminal revision applications. (55).

Criminal Courts.—The question of court fees, process fees and the charges for obtaining copies of relevant documents or notices of evidence in the Criminal Courts should be dealt with in the manner hereinbefore indicated in respect of civil Courts. (55).

(ii) Classes of Persons to be aided—Backward Classes.

The provisions hitherto made by Government for legal aid and assistance to persons belonging to the Backward Classes are inadequate. In the extended scheme of legal aid, it is recommended that in the case of such persons, so far as regards the means test, a presumption should be made that they are *prima facie* entitled to legal aid at State cost. Such presumption may however be rebutted by tangible evidence or otherwise in which case legal aid should be refused. In other respects they should be treated on an equal footing with poor persons or persons of limited means. So far as the means test is concerned, a certificate from the Prant Officer or the Assistant Backward Class Officer having jurisdiction over the area in which the backward class applicant resides should be considered sufficient proof of the applicant's inability to meet the expenses of litigation.

In the case of aboriginal and hill tribes, it is recommended that wherever possible, Government should employ a full-time legal assistant familiar with the local conditions to serve the needs of such tribes, the members whereof have to institute or defend civil or criminal proceedings. (57–62).

PARTIES TO WHOM LEGAL AID SHOULD BE GRANTED.

We recommend that legal aid should be given in proper cases not only to plaintiffs or petitioners or complainants but also to defendants, respondents and accused appearing before civil and criminal Courts and also to the petitioners or respondents appearing before the various Administrative and other Tribunals. (63).

(iii) Tests to be applied for grant of Legal Aid.

(1) The Means Test.

In determining the eligibility of an applicant for grant of legal aid, the Legal Aid Committee should take into account the applicant's disposable income. The disposable income should be arrived at after deducting from the applicant's gross income (1) interest on debts, (2) premia on life insurance policies, if any, and (3) compulsory contribution made by the applicant to any provident fund, compulsory insurance and such other scheme of social security, provided however that the help which the applicant would reasonably receive from any body of which he is a member towards meeting his expenses of litigation should be added on to his disposable income. In arriving at the disposable capital of the applicant the following should be excluded :—

(1) The family house,

(2) The necessary wearing apparel, cooking utensils and furniture,

(3) Tools of trade and implements of agriculture,

(4) Compulsory deposits not liable to attachment under the Provident Funds Act of 1945,

(5) Agricultural lands,

(6) Running business and stock-in-trade,

(7) Outstandings written off as bad debts,

(8) Ornaments, and

(9) The subject-matter of the claim ;

Provided however that the value of any property which the applicant has disposed of within 2 months of the application in order to enable him to so apply shall be added to his disposable capital, that no aid shall be given to the applicant who has entered into a champertous agreement in regard to the subject-matter and that no legal aid shall be given to companies or registered societies.

The disposable income and disposable capital should be the aggregate income or capital of a family unit, viz. the applicant, his wife and two children. (67–69).

Limits of Disposable Income.

(1) Full legal aid should be granted to all persons having disposable income of not more than Rs. 90, Rs. 75 and Rs. 60 per month, respectively, in Greater Bombay, in the Industrial Towns of Ahmedabad, Poona and Sholapur and in the mofussil areas.

(2) Partial legal aid should be granted to—

(*a*) all persons having disposable incomes to Rs. 115, Rs. 95, and Rs. 80 per month in the respective areas to the extent of three-fourths of the total costs,

(*b*) to persons having disposable incomes of Rs. 135, Rs. 115 and Rs. 95 per month in the respective areas, to the extent of one-half the total cost, and

(*c*) to persons with disposable incomes of Rs. 155, Rs. 135 and Rs. 110 per month in the respective areas to the extent of one-fourth of the total costs. Persons having disposable incomes exceeding Rs. 175, Rs. 150 and Rs. 125 per month in the respective areas should not be granted any legal aid. (74).

Limits of Disposable Capital.

Full legal aid should be granted to all persons having disposable capital not exceeding Rs. 750, Rs. 600 and Rs. 500, respectively, in Greater Bombay, in the Industrial Towns of Ahmedabad, Poona and Sholapur and in the mofussil areas.

Partial Legal aid should be granted to:

(*a*) persons having disposable capital not exceeding Rs. 1,250, Rs. 1,100 or Rs. 800 in the respective areas to the extent of three-fourths of the total costs;

(*b*) persons having disposable capital not exceeding Rs. 1,700, Rs. 1,350 and Rs. 1,050 in the respectivo areas to the extent of one-half the costs, and

(*c*) persons having disposable capital not exceeding Rs. 2,150, Rs. 1,600 and Rs. 1,300 in the respective areas to the extent of one-fourth of the total costs.

Persons having disposable capital exceeding Rs. 2,500, Rs. 1,800 or Rs. 1,700 in the respectivo areas should not be granted any legal aid. (74).

Persons who have been recommended for partial legal aid would be liable to contribute towards the expenses of the litigation the excess over the partial legal aid granted to them, and in determining the amount of such contribution, regard should be had both to the applicant's disposable income and disposable capital. (75-78).

(2) The Prima Facie Case Test.

Civil Cases.

(1) Before granting legal aid, whether full or partial, the Legal Aid Committee should be satisfied that the applicant has a *prima facie* case for the prosecution or defence of the legal proceeding to which he is a party.

(2) In the case of first appeals, the applicant should show from the judgment and decree appealed from that there is an arguable case for him. In the case of grant of legal aid in the Second Appeals regard should be had to the provisions of section 100 of the Code of Civil Procedure and all the requirements of that section should be satisfied.

(3) As regards Civil Revision Applications, legal aid should not be granted unless it is considered necessary in the interests of justice. (79–80).

Criminal Cases.

In the case of complainants in non-cognizable cases and the accused in other cases, the only test which should be satisfied before grant of legal aid should be whether it is desirable in the interests of justice that legal aid should be granted. It is neigther feasible not necessary that the applicant, particularly the accused in a cognizable case, should make out a *prima facie* case. It should be left to the discretion of the Legal Aid Committee to decide whether it is desirable in the interests of justice that legal aid should be granted in such matters. These recommendations are without prejudice to the existing provisions in the matter of grant of legal aid to persons accused of capital offences, etc.

In cases where a doubt exists as to the applicant's means, the benefit of the doubt should be given to the applicant. (81–84).

Other Tests.

Legal aid should not be granted in cases where the subject-matter of the dispute is trivial or trifling and which no prudent and reasonable man would bring in a Court of law or where the chances of obtaining satisfaction from the judgment-debtor are very meagre or remote or where the defendant is admittedly in impecunious circumstances or on the verge of insolvency. (85–86).

(*iv*) *Safeguards.*

Besides the means test, the *prima facie* case test and scrutiny of the applicant's claim to legal aid by the Legal Aid Committee, the following further safeguards should be provided against the abuse of the scheme, viz.:

(1) a declaration on oath or solemn affirmation made by the applicant at the foot of his application showing the extent of his disposable income and disposable capital,

(2) a certificate from a respectable citizen or a responsible officer of the State regarding his means,

(3) a bond taken from the applicant that he would diligently pursue the legal remedy and not enter into any champertous transaction regarding the property in dispute nor compromise the dispute except with the consent of the Legal Aid Committee or permission of the Court, and

(4) cancellation of the legal aid certificate in appropriate cases. (87-88).

(*v*) *Legal Aid in Criminal Courts.*

(1) All cases in which the accused are charged wth petty offences not involving moral turpitude or offences which are punishable with mere fine should be excluded from the purview of legal aid. Legal aid should be granted in those cases only where the accused are charged with offences punishable with a substantive sentence of imprisonment. The sentence of imprisonment imposed in lieu of or for non-payment of fine is to be excluded from this category.

(2) In cases triable exclusively by the Court of Sessions, legal aid need not be granted to the accused in the Courts of Commiting Magistrates. In cases which are not exclusively triable by the Court of Sessions but where committal proceedings are held by the Magistrate and where the Magistrate may commit the accused to the Court of Session because he considers that he will not be competent to inflict suffiöient punishment having regard to the gravity of the offence, and in all other cases legal aid should be granted to the accused provided the tests laid down are satified.

(3) In the case of complaints in non-cognizable cases the legal aid committee should be invested with discretion to grant legal aid in proper cases if the committee finds that such aid should be given in the interests of justice. (91-96).

(vi) Legal Aid in Civil Courts.

Legal aid should not ordinarily be granted in actions of a personal nature, e.g., defamation, malicious prosecution, etc. But even in such cases the Legal Aid Committee should have the discreiton to grant legal aid in proper cases where the committee is satisfied that the applicant deserves legal aid. Subject to this exception regarding personal actions, we recommend that legal aid should normally be granted to all deserving applicants in all forms of actions and for all kinds of reliefs in the trial Court as well as in the Appellate Court, provided the tests laid down above are satisfied. (97).

(vii) Legal Aid in Administrative and other Tribunals.

(*a*) *Sales Tax Tribunal.*—No legal aid should be granted to persons who are concerned in proceedings before the Sales Tax Tribunal. (99).

(*b*) and (*c*) *Revenue Tribunals and Co-operative Societies Tribunals.*—Ordinarily no provision for legal aid is necessary for persons appearing before these Tribunals. Nevertheless, the Legal Aid Committee should have discretion to grant legal aid in appropriate cases where such aid is considered necessary or where the Tribunal itself has made a requisition in that behalf to the Legal Aid Committee. (100–101).

(*d*) *Tenancy Tribunal.*—Lawyers are not as a rule allowed to appear before these Tribunals which are set up mainly for the benefit of the tenants and benefit of doubt is always given to the tenants. There may however be cases where the landlord might himself come within the category of poor person or a person of limiated means. It is therefore recommended that in proper cases legal aid should be granted to landlords and tenants alike and it is also recommended that in such cases where legal aid certificates are granted, the Tribunals should permit lawyers to appear for the assisted persons. (102).

(*e*) *Debt Relief Boards.*—In proper and deserving cases, where the Legal Aid Committee deems fit to grant certificates of legal aid to litigants appearing before the Debt Relief Boards, the Courts concerned should permit these lawyers to appear before them and represent the assisted persons. It is also recommended that the existing propvision as regards the appointment of Debt Relief Assistants should be continued. (103–107).

(*f*) *Commissioners for Workmen's Compensation.*—In cases coming before the Commissioner for Workmen's Compensation, legal aid should be available to those workmen who do not belong to any trade union or where the trade union to which the workman belongs has no standing lawyer or has no sufficient funds to employ a lawyer or even in cases where the trade union has employed a lawyer but where the presiding Judge or the Court considers that legal aid should be availabe for arguing knotty or important questions of law arising in the case, provided that the primary tests laid down above have been satisfied before the legal aid certificate is granted. (108–112).

(*g*) *Commissioner under the Payment of Wages Act,* 1936.—Cases arising under this Act should be treated on a par with the cases of injured workmen appearing before the Commissioner for Workmen's Compensation and legal aid should be granted to the applicants on the same basis. (113).

(*h*) *Labour Courts and Industrial Courts.*—Ordinarily no special provisions are necessary for grant of legal aid in cases arising before such Tribunals. In appropriate cases however where intricate questions of law arise, provision for legal aid should be made for the workmen or even for the trade unions concerned for prosecuting such cases before the Labour Courts and the Industrial Courts and also before the appropriate civil Courts. These Courts should be treated on an equal footing with the Courts of the Commissioners for Workmen's Compensation and Payment of Wages.

In the case of an individual workman a certificate from the Labour Officer and in the case of a trade union, a certificate from the Registrar of Trade Unions that the applicant is deserving of legal aid, should be taken by the Legal Aid Committee as sufficient to satisfy the means test.

Cases coming before the aforesaid Tribunals in which the industrial and factory workers are concerned are of a special nature and it is therefore recommended that for rendering legal assistance to the workmen or the unions in all these Courts, a lawyer, who has specialised in this type of work, should be appointed a full-time Law Officer on a proper salary paid to him by the State. (114–115).

(*i*) *Arbitrations.*—All applications made under the Indian Arbitration Act can and should be treated as proceedings in civil Courts on a par with other civil cases for grant of legal aid. Where the arbitration is through the intervention of the Court, legal aid should be continued to be granted to the party if such party was an assisted litigant in the suit. (116–117).

(*j*) *Juvenile Court.*—Cases coming before this Court arise under the Bombay Children's Act and lawyers as a rule are not allowed to appear in that Court except with the permission of the Court. In appropriate cases, the Legal Aid Committee should have discretion to grant legal aid and where the Committee has granted a certificate for such aid, the applicant should be allowed by the Court to appear by a lawyer assigned by the Legal Aid Committee. (118).

(*k*) *Departmental Inquiris.*—In departmental inquiries conducted by a Government Officer, no legal aid should be given. But where the employee concerned has asked for permission to be allowed to appear by a lawyer and such permission is granted, he may be allowed in proper cases to apply to the Legal Aid Committee for certificate of legal aid. (119).

(*viii*) *Machinery for Legal Aid.*

For the purpose of enforcing the scheme of legal aid, the following organisation should be created:

(A) A Taluka Legal Aid Committee in every taluka having a Court of Civil Judge, Junior Division, to be nominated by the District Judge in consultation with the President of the Taluka Bar Association. (133).

(B) A District Legal Aid Committee in every district headquarter to be nominated by the District Judge in consultation with the President of the District Bar Association. (134).

(C) In Greater Bombay, Legal Aid Committees should be established for (1) the High Court, Original Side, (2) the High Court, Appellate Side, (3) the City Civil Court and Session Court for Greater Bombay, (4) the Court of Small Causes, and (5), (6) and (7) three separate Committees for the Presidency Magistrates' Courts. (135–143).

(D) Provincial Legal Aid Committee, having its office in Greater Bombay, with the duties to supervise, direct and control the work of the above-named Legal Aid Committees, to be in charge of and administer the Legal Aid Fund and to make reports and recommendations to the Government. (144–147).

In the appointment of these Committees, the principle of nomination should be followed, and the members should work in an honorary capacity.

These Legal Aid Committees should be invested with the sole discretion of judging the sufficiency or otherwise of the material placed before them by the applicant for legal aid. (148).

In order to avoid delay we also recommend that no notice of the inquiry being made into the means of the applicant should be given to the opponent or to the Government Pleader. (150). Such notice should, however, be given both to the opponent and also to the Government Pleader after the legal aid certificate has been granted. It would then be open to the Committee either to confirm or to revise its decision after considering such further material as may be placed by the opponent or the Collector. (150).

In cases of extreme urgency, e.g., when the suit is about to be barred by limitation or actions in the nature of *qui-a-timet* actions where a detailed inquiry cannot be made immediately, an interim legal aid certificate should be granted, provided the means test is *prima facie* satisfied. (151).

There should be no appeal from the decision of the Legal Aid Committee, granting or refusing legal aid.

(*ix*) *Assignment of Lawyers.*

We recommend that all lawyers—seniors as well as juniors—practising in all the Courts should be assigned in rotation upto a maximum of six cases of poor litigants every year to be conducted by them free and without any remuneration, in other words, every lawyer should be assigned six free cases every year. The balance of cases

of litigants who have been granted legal aid certificates should be distributed amongst the members of legal profession whose names are enrolled on the panels maintained by the Legal Aid Committees, such panels being composed of lawyers who have volunteered their services for the purpose of legal aid to assisted litigants on payment of taxed costs in civil cases and such reasonable fees as may be prescribed by the Legal Aid Committee in criminal cases. (161).

No lawyer to whom the case of an assisted person is assigned shall be at liberty to refuse the same except for sufficient cause, e.g., having given advice to the other side, some special personal reason and the like. (163–164).

A lawyer enrolled on the panels aforesaid should ordinarily have experience of at least five years at the Bar. (167).

These panels should be framed by the respective Bar Associations and furnished to the Legal Aid Committee in the respective areas and should be revised after every 3 years. (169).

(*x*) *Remuneration for the Lawyer.*

(1) On the Original Side of the High Court, the number of cases in excess of the maximum of six free cases to be worked up by each attorney and Advocate (O.S.) should be distributed amongst the panel in rotation on payment of full taxed costs. (170).

(2) The same principle should be applied in the case of lawyers on the High Court, Appellate Side. (171).

(3) In all other Courts also the lawyers should be paid the taxed costs in all cases after allowing for the six free cases every year. (172).

(4) Similarly in criminal cases, the lawyers assigned by the Legal Aid Committee should be paid at the same rate as the Government Pleader or the Assistant Government Pleader is paid on the Appellate Side, after allowing for six free cases every year. (173).

(5) In criminal cases the lawyer assigned to conduct cases of accused should normally be paid at the same rate as the Public Prosecutor as above, but the Legal Aid Committee should be invested with the discretion in proper cases to give to the defence lawyer such higher remuneration as may be considered fit having regard to the nature and extent of the work involved. (173).

(6) In cases before the Administrative and other Tribunals the remuneration to be paid to the lawyers should be left to the discretion of the Legal Aid Committee. (174).

(*xi*) *Costs.*

(1) If the assisted litigant is unsuccessful, an order for payment by him of the costs of the successful party should be limited to such amount as the Judge may in his discretion consider reasonable having regard to all the circumstances including the financial means of the assisted litigant. (175).

(2) Where the assisted litigant is successful and the other side against whom the order of costs has been made is an unassisted litigant, the amount of costs awarded should be recovered from the latter; the costs thus recovered should be credited to the Legal Aid Fund. (176).

PART IV.

Legal Advice.

(1) Provision should be made for legal advice to be given to poor persons and persons of limited means to nable them to take apporpirate action for enforcing their rights and redressing their grievaunces in a Court of law. (185).

(2) Drafting of documents should be excluded from the scope of legal advice. (186).

(3) Legal advice should be given by individual lawyers whose names are enrolled on the panels maintained by the Legal Aid Committees. (189).

(4) The applicant for legal advice need not be required to satisfy the means test with the same strictness and rigidity as the applicant for grant of legal aid. (190).

(5) A fee of Rs. 2 in Greater Bombay and Re. 1 in the mofussil should be charged for each attendance to the applicant for legal advice. This fee would be exclusive of postage and registration charges. (192). In appropriate cases the Legal Aid Committee should have the discretion to remit these charges. (193).

(6) The fees realised for rendering legal aid and advice should be credited to the Legal Aid Fund. (194).

PART V.

Some Suggestions made to the Committees for making justice more easily accessible.

(1) Full publicity should be given by the State and the department concerned to all statutes, ordinances, notifications, regulations, etc., which may be passed from time to time in the language or languages easily understandable by the public in general and copies of the same should be made available to them. (202).

(2) The State should make a generous remission of court fees, etc., in cases which are compromised or settled before the issues are framed or where they are proceeded with *ex parte* or are withdrawn before they reach the final hearing. (203).

(3) Steps should be taken to simplify the present cumbrous procedure in Courts. With regard to the Original Side of the High Court, the suggestions made by the Bombay Incorporated Law Society may be considered. (204).

(4) The jurisdiction of the Small Causes Court should be enlarged and summary procedure should be extended in the mofussil and counter-claims should also be allowed to be filed by the litigants there. (206).

(5) The Police Prosecutors should not be under the supervision of the District Magistrate but should be put under the supervision and control of appropriate officers not connected with the executive. (207). A Central Bureau of Prosecutions for Greater Bombay should be established and Public Prosecutors in Presidency Magistrates' Courts and those entrusted with prosecution cases in Sessions or in appeal to the High Court should be under the control and supervision of such Bureau. (208).

(6) To avoid delay and the consequent inconvenience and harassment to the parties, it is recommended that wherever possible all miscellaneous work should be entrusted to a particular Judge or a Magistrate for a particular period leaving the other Judges or Magistrates free to devote all their time to the hearing and final disposal of cases from day to day. (210). In Greater Bombay the Presidency Magistrates should be relieved of all petty cases under the Motor Vehicles Act, the Municipal Act, the Prevention of Cruelty to Animals Act, etc., which were formerly dealt with by Honorary Presidency Magistrates. (211.)

(7) The Courts should sit punctually from 11 a.m. to 5 p.m. excluding the period of recess and should hear the suits and proceedings before them from day to day and should deliver judgments immediately as far as possible. (214).

(8) There should be a more frequent inspection of the subordinate Courts in order to scrutinise the manner in which the subordinate judiciary is doing the work and in order to find out ways and means for more speedy and expeditious disposal of work before them. (215).

(9) Wherever possible, the presiding Judge should follow the pre-trial method in order to curtail the disputes between the parties. He should also adopt methods of conciliation. (216).

(10) Minor disputes of a petty nature, civil or criminal, may be entrusted to the Village Panchayats or the Nyaya Panchayats to be established under the Bombay Village Panchayat Act of 1933 and the subsequent amendments thereto. (218).

(11) The judicial machinery and the practice and procedure in the civil and criminal Courts should be examined so as to simplify the procedure and reduce delays, either by

the Government or the High Court or by a special Committee appointed by the Government for the purpose. (219).

PART VI.

Institutions engaged in the work of Legal Aid.

It is recommended that Government should give increased financial aid to the Bombay Legal Aid Society at least upto the time the legal aid scheme suggested in this Report comes into operation in Greater Bombay in order to enable the Society to fulfil its programme of work. (237) The financial assistance should be commensurate with the needs of the Society. It is recommended that its grant should be extended to Rs. 9,000 per year. (240).

Other Legal Aid Societies, wherever they are, should not be disbanded but should be given necessary grants-in-aid in order to ensure their further existence as agencies for the purpose of rendering legal advice to poor persons and persons of limited means. (241).

PART VII.

Legal Aid Fund.

The Legal Aid Fund should consist of:—

(1) contributions of the Provincial Government,

(2) contributions and donations from local bodies, associations of merchants and trade unions, public charitable trusts and charitable estates and organisations,

(3) costs recovered from unsuccessful opponents,

(4) contributions by partially assisted persons, and

(5) fees received from the applicants for legal advice.

The Legal Aid Fund should be under the control of the Provincial Legal Aid Committee and its accounts should be annually audited. (243-244).

PART VIII.

Publicity.

As regards civil litigation a slip containing information regarding the Legal Aid Committee should be attached to the summons or process which would be issued by the Court. In criminal cases also such slips should be attached to the summons or notices.

Information regarding the existence of the Legal Aid Committee should also be made available at every police station, every Magistrate's Court and Sessions Court, Public Hospitals, etc.

The State should give full publicity to the measures for legal aid and advice adopted by it. (246).

PART IX.

Steps for Implementing the Suggestions.

If the scheme for legal aid herein suggested cannot be implemented as a whole, it may be introduced in stages in the following order of priority:

(1) All litigation or proceedings in criminal Courts,

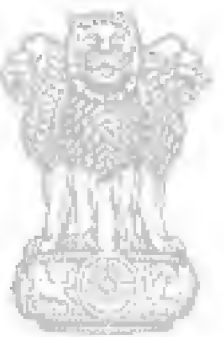
(2) Backward Classes,

(3) Cases before the Tenancy Tribunals, the Workmen's Compensation Courts and the Industrial and Labour Courts,

(4) Fully assisted persons in civil Courts, and

(5) Partially assisted persons in civil Courts. (250).

Instead of "paupers", "poor persons" and "persons of limited means", the terms "assisted person" and "partially assisted persons" should be adopted. (254).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APPENDIX I.

QUESTIONNAIRE.

1. Do you subscribe to the view that the State must accept the obligation to provide legal aid and assistance to poor persons, persons of limited means and to persons of backward classes who are unable to seek redress or justice in civil and criminal proceedings ? Do you consider that such aid and assistance must be given at the cost of the State, and, if so, to what extent ?

2. What, in your opinion, should be the true scope of any comprehensive scheme of legal aid ? Should it be restricted to mere remission of court fees and law charges ? Or, should it be extended so as to include other out of pocket expenses and also actual representation by a lawyer at all stages of any civil proceedings and legal advice including correspondence, drafting of documents, etc. ?

3. Do you recommend the grant of legal aid in all types of courts ? Or, would you exclude from its scope administrative Tribunals, such as the Sales Tax Tribunal, the Revenue Tribunal or the Co-operative Societies Tribunal ?

4. Do you consider that special provision for legal aid should be made in connection with the work of (*i*) the Commissioners for Workmen's Compensation, (*ii*) Debt Relief Boards, (*iii*) Tenancy Tribunals, and (*iv*) Labour Courts including Industrial Court ?

5. Should legal aid be granted in all forms of actions and in respect of all kinds of proceedings ? Or, would you exclude, for instance, actions for defamation, malicious prosecution, etc. ?

6. Should legal aid be confined only to plaintiffs or petitioners or should it be granted to defendants and respondents also ?

7. Do you consider that the existing provisions for giving legal aid in civil proceedings to poor persons and persons of limited means are adequate and satisfactory ?

Note.—The existing provisions are contained in Orders 33 and 44 of the Code of Civil Procedure for remission of court fees in civil cases and in rules 214 to 236 of the High Court (Original Side) Rules.

8. In criminal cases under the existing rules only a person charged with an offence punishable with death is allowed at Government costs the services of a lawyer for his defence and only in the Court of Sessions or the High Court. Do you consider that the scope of such legal aid should be enlarged so as to make it available to the accused in the Magistrates' and appellate Courts as well and for offences punishable with lesser penalty ?

9. Do you think that legal aid should be provided to complainants of limited means in non-cognizable cases, and, if so, what safeguards would you suggest for preventing the abuse of such provisions ?

10. Should legal aid be made available only to those litigants who are too poor to pay anything towards the costs (including lawyers' fees) of litigation ? If not, are you in favour of prescribing (*i*) a limit based on income or capital, and (*ii*) a scale of contribution to be paid by them within those limits ? Please give detailed suggestions as to the limit and the scale of such contribution.

11. What tests, apart from income or the status of a person, should be applied in determining whether he is entitled to the benefit of the legal aid scheme ? What safeguards would you recommend against an abuse of the scheme, i.e., against securing that it does not encourage vexatious or frivolous or other unreasonable proceedings, or proceedings in which the costs are likely to be out of all proportion to the amounts or importance of the claim ?

12. Do you consider the present machinery for determining the financial means of the person entitled to legal aid satisfactory ? If not, what machinery would you

suggest in its place and stead ? Are you in favour of issuing a notice of such inquiry to the opponent ?

13. What agency (*e.g.* Bar Association, Legal Aid Committee, Court or Government Department) is, in your opinion, most suitable for the administration of any legal aid scheme ? To what extent should the activities of such agency be subject to the supervision or control of the State or Courts ?

14. What are the features of the present system of administration of justice which render justice not easily accessible to poor persons, to persons of limited means and to persons of backward classes ?

15. What, in your opinion, are the measures (including simplification of procedure in courts of law, conciliation, pre-trial and the like) which should be adopted in order to render justice readily accessible to such persons ?

16. Do you recommend any reduction in the prescribed scale of court fees, law charges and lawyer's fees in cases to which a person entitled to the benefit of the lega l aid scheme is a party ?

17. What contribution should the legal profession make towards the successful working of the scheme for legal aid ?

18. Do you consider that all legal practitioners in Courts should be on the list of those available for giving legal aid and that a certain number of briefs be assigned to each of them free of charge ?

19. Should a lawyer engaged to represent a person entitled to the benefit of legal aid in any civil or criminal proceedings charge remuneration for services so rendered, and, if so, to what extent ?

20. What provisions, would you suggest, should be made for legal advice including correspondence, drafting of documents, etc., and what machinery would you recommend for the same ?

21. What specific provision, if any, should be made for legal aid in civil as well as criminal courts to persons belonging to backward classes like Bhils, Adivasis, etc. ?

22. Are there any agencies or institutions in your town or district for giving legal aid or legal advice to poor persons, persons of limited means and persons belonging to backward classes ? If so, please give brief details of their objects, membership and work done by them.

23. Do such agencies or institutions, if any, receive any financial assistance from Government ?

24. What encouragement and financial assistance, if any, should be given by the State to such agencies or institutions ?

25. Please offer any other general remarks on the problem which you would like the Committee to consider.

APPENDIX II.

Names of persons and Associations who submitted their Replies to the Questionnaire.

District Judges.

1.	Bhat, Mr. P. C.	... ...	Kaira (Nadiad).
2.	Vaze, Mr. R. S.	... ...	Ahmednagar.
3.	Bakhle, Mr. V. S.	... ...	Sholapur.
4.	Karkhanis, Mr. N. D.	... ...	Surat.
5.	Gunjal, Mr. P. H.	... ...	Belgaum.
6.	Saraf, Mr. V. R.	... ...	East Khandesh (Jalgaon).
7.	Shrikhande, Mr. N. S.	... ...	Kanara.
8.	Karnik, Mr. R. R.	... ...	Bijapur.
9.	Vakil, Mr. B. C.	... ...	Nasik.
10.	Albal, Mr. V. V.	... ...	Satara.
11.	Katre, Mr. G. N.	... ...	West Khandesh (Dhulia).
12.	Bhatt, Mr. C. G.	... ...	Ahmedabad.
13.	Raju, Mr. V. B.	... ...	Surat.
14.	Mirajkar, Mr. R. H.	... ...	Ratnagiri.
15.	Shinde, Mr. R. D.	... ...	Dharwar.
16.	Guggali, Mr. G. H.	... ...	Thana.
17.	Miabhoy, Mr. N. M.	... ...	Poona.
18.	Palekar, Mr. S. B.	... ...	Kolhapur.

Judges of the City Civil Court, Bombay.

19.	Honavar, Mr. M. B.	... ...	Principal Judge.	One joint reply by all four.
	Khandalawalla, Mr. K. J.	... ...	Judge.	
	Bhatt, Mr. J. C.	... ...	Judge.	
	Shelat, Mr. J. M.	... ...	Judge.	

Judges of the Small Causes Courts.

20.	Lalkaka, Mr. M. D.	... ...	Chief Judge, S. C. C., Bombay.
21.	Patel, Mr. M. I.	... ...	Ahmedabad.
22.	David, Mr. B. ...	... ...	Poona.

ASSISTANT JUDGES.

23.	Nazareth, Mr. J. R.	...	Satara.
24.	Kaprekar, Mr. S. R.	...	Poona.
25.	Naik, Mr. V. A. (Extra)	...	Satara.
26.	Bagali, Mr. M. S. (Extra)	...	Belgaum.
27.	Lupane, Mr. D. S.	...	Thana.
28.	Shelat, Mr. N. G.	...	Ahmedabad.
29.	Paralkar, Mr. V. R.	...	Belgaum.
30.	Shaikh, Mr. A. A.	...	Nasik.
31.	Wagle, Mr. V. G. (Extra)	...	Nasik.
32.	Jeste, Mr. V. D.	...	Sholapur.
33.	Sarela, Mr. A. S. (Extra)	...	Thana.

CIVIL JUDGES, SENIOR DIVISION AND JUNIOR DIVISION.

34.	Hasan, Mr. M. S.	...	Poona.
35.	Desai, Mr. V. T.	...	Nasik.
36.	Talasikar, Mr. V. R.	...	Newasa.
37.	Thorat, Mr. M. B.	...	Khed (Poona).
38.	Vagyani, Mr. A. B.	...	Ratnagiri.
39.	Tallur, Mr. S. S.	...	Satara.
40.	Nadkarni, Mr. M. M.	...	Jalgaon (E. K.).
41.	Sequira, Mr. A. C.	...	Bijapur.
42.	Deshpande, Mr. N. S.	...	Honavar (Kanara).
43.	Gathe, Mr. D. G.	...	Bhusawal.
44.	Rajadhyaksha, Mr. G. H.	...	Karad (Satara).
45.	Mahatekar, Mr. P. D.	...	Baramati (Poona).
46.	Tadvi, Mr. H. S.	...	Dhulia.
47.	Shah, Mr. V. R.	...	Viramgaum (Ahmedabad).
48.	Soonawala, Mr. R. K.	...	Umreth (Kaira)
49.	Kazi, Mr. M. H.	...	Belgaum.
50.	Naik, Mr. N. B.	...	Tasgaon (Satara).
51.	Shirkol, Mr. M. M.	...	Bail-Hongal (Belgaum).
52.	Patil, Mr. H. S.	...	Barsi (Sholapur).
53.	Vidyarthi, Mr. S. M.	...	Pimpalgaon (Nasik).

CIVIL JUDGES SENIOR DIVISION AND JUNIOR DIVISION—*contd*

54.	Desai, Mr. T.	...	... Ankleshwar.
55.	Rajadhaksha, Mr. D. G.	...	... Bassein (Thana).
56.	Badshah , Mr. A. S.	...	... Thana.
57.	Kulkarni, Mr. D. B.	...	... Erandol.
58.	Son, Mr. D. J.	...	... Malegaon (Nasik).
59.	Jabade Mr. J. T.	...	... Yeola (Nasik).
60.	Solanki, Mr. V. M.	...	... Jambusar.
61.	Lala, Mr. F. M. H.	...	... Nasik
62.	Bhupali, Mr. N. S.	...	... Haveri.
63.	Gadgil, Mr. K. K.	...	... Ahmednagar.
64.	D'Costa, Mr. S. G. J.	...	... Karwar.
65.	Mehta, Mr. J. H.	...	... Ahmedabad.
66.	Karmarkar, Mr. H. K.	...	... Kalyan.
67.	Vani, Mr. N. K.	...	... Sinnar.
68.	Saklikar, Mr. R. K.	...	... Surat.
69.	Patil, Mr. S. D.	...	... Satara.
70.	Kulkarni, Mr. R. N.	...	... Dahanu (Thana).
71.	Naik. Mr. D. B.	...	... Amalner.
72.	Shaikh, Mr. I. A.	...	... Godhra.
73.	Shikhare, Mr. D. P.	...	... Ahmednagar.
74.	Kute, Mr. P. K.	...	... Ratnagiri.
75.	Joshi, Mr. R. K.	...	... Koregaon.
76.	Dhruv, Mr. M. M.	...	... Kapadwanj.
77.	Shah, Mr. A. K.	...	... Broach.
78.	Gunjal. Mr. J. S. (Joint)	...	... Sholapur.
79.	Chapatwala, Mr. T. U.	...	... Dhulia.
80.	Tadvi, Mr. H .S.	...	... Dhulia.
81.	Chhatre, Mr. M. K.	...	... Dhulia.
82.	Waqif, Mr. A. M. T.	...	... Shirpur (West Khandesh).
83.	Shaikh, Mr. M .A .		... Amalner, (West Khandesh).
84.	Shaikh, Mr. M. H.	...	... Bhiwandi.
85.	Bhoj, Mr. S. M.	...	... Hubli.

PRESIDENCY MAGISTRATES IN BOMBAY.

86.	Khambata, Mr. K. J.	...	Presidency Magistrate.
87.	Brown, Mr. Oscar H.	...	Chief Presidency Magistrate.
88.	Gordhandas, Mr. M. J.	...	Presidency Magistrate.
89.	Velkar, Rao Saheb G. B.	...	Presidency Magistrate.
90.	Thakore, Mr. Kantilal C.	...	Presidency Magistrate.
91.	Shellim, Mr. A. A.	...	Presidency Magistrate.
92.	Parikh , Mr. R. S.	...	Presidency Magistrate.
93.	Yennemadi, Mr. D. D.	...	Presidency Magistrate.
94.	Menezes, Mr. J.	...	Presidency Magistrate.

DISTRICT MAGISTRATES.

95.	Bowman, Mr. J. B.	...	Thana.
96.	Joshi, Mr. R. C.	...	Ahmednagar.
97.	Allahbaksh, Mr. M.	...	Kanara.
98.	Kumar, Mr. V.	...	West Khandesh.
99.	Yardi, Mr. M. R.	...	Poona.
100.	Deshpande, Mr. M. K.	...	Surat.
101.	Saldanha, Mr. J. A.	...	Nasik.
102.	Kharkar, Mr. P. K.	...	Kaira.
103.	Naik, Mr. A. S.	...	Sholapur,
104.	Damry, Mr. P. N.	...	Ahmedabad.
105.	Saldanha, Mr. L. F.	...	Bijapur.
106.	Benjamin, Mr. S.	...	Dharwar.
107.	Jadhav, Mr. M. K.	...	Belgaum.

RESIDENT MAGISTRATES.

108.	Ursekar, Mr. H. S.	.. Thana.
109.	Salve, Mr. R. P.	.. Yawal (East Khandesh).
110.	Nimbalkar, Mr. B. S.	.. Kankavli (Ratnagiri).
111.	Dani, Mr. H. S.	.. Dohad.
112.	Hegde, Mr. S. S.	.. Shiggaon.
113.	Nadkarni, Mr. P. D.	.. Umbergaon.
114.	Patel, Mr. N. J.	.. Broach.
115.	Nirgude, Mr. U. G.	.. Karad (Satara).
116.	Miraj, Mr. A. G.	.. .. Hungund.
117.	Vaidya, Mr. G. J.	.. .. Wai (Satara).
118.	Tamble, Mr. S. O.	.. .. Baramati (Poona).
119.	Kamodia, Mr. J. M.	.. Umreth (Kaira).
120.	Kulkarni, Mr. R. B.	.. .. Sirsi (North Kanara).
121.	Athalye, Mr. V. V.	.. Poona and Kirkee Cantonment.
122.	Mehta, Mr. U. J.	.. Poona.
123.	Chhaya, Mr. N. M.	.. Poona.
124.	Hangarki, Mr D. M.	.. Belgaum.
125.	Desai, Mr. G. R.	.. Bagalkot.
126.	Desai, Mr. Y. G.	.. Dhulia.
127.	Patel, Mr. O. H.	.. Amalner.
128.	Bhole, Mr. T. S.	.. Mahad.
129.	Habbu, Mr. S. V.	.. Dharwar.
130.	Risbud, Mr. B. Y.	.. Sholapur.
131.	Ektare, Mr. M. R.	.. Malegaon.
132.	Kadolkar Mr. D. R.	.. Kurduwadi (Sholapur).
133.	Katkar, Mr. K. L.	.. Sholapur.
134.	Patankar, Mr. G. K.	.. Dhulia.
135.	Vasavda, Mr. C. H.	.. Surat.
136.	Dharuskar, Mr. S. L.	.. Chiplun.
137.	Kamble, Mr. D. B.	.. Khed (Poona).
138.	Bangi, Mr. T. A. R.	.. Saundatti (Belgaum).
139.	Saiyed, Mr. K. V.	.. Katol.
140.	Kaularni, Mr. G. B.	.. Hubli.
141.	Kollali, Mr. R. V.	.. Ranebennur.
142.	Nagmoti, Mr. G. S.	.. Karwar (Town).

GOVERNMENT PLEADERS AND PUBLIC PROSECUTORS.

143. Shah, Mr. C. M. .. .. Nadiad.
144. Shah, Mr. Vithaldas C. .. Panch Mahals.
145. Mehta, Mr. F. G. .. .. .. Banas Kantha.
146. Choksi, Mr. H. M. .. Government Pleader, High Court.
147. Bhalerao, Mr. K. P. .. Ahmednagar.
148. Rao, Mr. K. R. .. .. .. Bijapur.
149. Thakar, Mr. S. M. .. .. Ratnagiri.
150. Mudholkar, Mr. V. G. .. West Khandesh.
151. Thakore, Mr. R. M. .. Broach.
152. Mavinkurve, Mr. B. S. .. Kanara.
153. Janorkar, Mr. M. V. .. .. Nasik.
154. Malimath, Mr. S. S. .. Dharwar.
155. Deshpande, Mr. A. S. .. Jalgaon (East Khandesh).
156. Desai, Mr. B. H. .. Ahmedabad.
157. Shah, Mr. V. S. .. Sholapur.
158. Tarkunde, Mr. B. M. .. Poona.
159. Jakati, Mr. B. V. .. Belgaum.

SENIOR POLICE PROSECUTOR.

160. Deshmukh, Mr. K. V. .. Surat.

BAR ASSOCIATIONS IN BOMBAY.

161. The Bombay Incorporated Law Society.
162. Bombay Advocates Association, Presidency Small Cause Cour Bombay.
163. Bombay Bar Council, High Court, Bombay.
164. Bombay Bar Association, High Court (O. S.) Bombay.

DISTRICT BAR ASSOCIATIONS.

165. Thana Bar Association.
166. Karwar Bar Association.
167. Sholapur Bar Association.
168. Ahmednagar Bar Association.
169. West Khandesh Bar Association.
170. Ratnagiri Bar Association.
171. Ahmedabad Bar Association.
172. Dharwar Bar Association.
173. Surat Bar Association.
174. Kaira Bar Association.

TALUKA BAR ASSOCIATIONS.

175. Bail-Hongal Bar Association.
176. Rahuri Bar Association.
177. Bhiwandi Bar Association.
178. Satana Bar Association.
179. Hukeri Bar Association.
180. Ranebennur Bar Association.
181. Haveri Bar Association.
182. Devrukh Bar Association.
183. Amalner Bar Association.
184. Sinnar Bar Association.
185. Chikodi Bar Association.
186. Borsad Bar Association.
187. Islampur Bar Association.
188. Junnar Bar Association.
189. Athani Bar Association.
190. Pimpalgaon Bar Association.
191. Pen Bar Association.
192. Sangamner Bar Association.
193. Dhandhuka Bar Association.
194. Baramati Bar Association.
195. Bagalkot Bar Association.
196. Newasa Bar Association.
197. Mahad Bar Association.
198. Gokak Bar Association.
199. Saswad Bar Association.
200. Erandol Bar Association.
201. Kapadwanj Bar Association.
202. Kopargaon Bar Association.
203. Yawal Bar Association.
204. Ankleshwar Bar Association.
205. Mudebhal Bar Association.
206. Kumta Bar Association.
207. Karad Bar Association.
208. Koregaon Bar Association.

TALUKA BAR ASSOCIATIONS—*contd.*

209. Bhusawal Bar Association.

210. Patan Bar Association.

211. Bulsar Bar Association.

212. Hubli Bar Association.

213. Devgar Bar Association.

214. Shevgaon Bar Association.

215. Barsi Bar Association.

216. Nasik Bar Library.

217. Dholka Bar Association.

JUDGES OF LABOUR COURTS.

218.	Dingare, Mr. B. S.	. East Khandesh, Jalgaon.
219.	Vin, Mr. D. M.	.. .. Ahmedabad.
220.	Trilokekar, Mr. M. K.	.. Sholapur.
221.	Vyas, Mr. P. D.	.. .. Ahmedabad.
222.	Bakhalo, Mr. P. S. (First)	.. Bombay

SECRETARIES TO GOVERNMENT.

223.	Bedekar, Mr. G. V.	.. Home Department.
224.	Sardesai, Mr. V. N.	.. Revenue Department.
225.	Dravid, Mr. N. K.	.. Labour Department.

PRESIDENTS AND SECRETARIES OF SOCIETIES, MANDALS AND BOARDS.

226. Local Board, Nadiad.

227. Local Board, Nasik.

228. Local Board, East Khandesh.

229. Local Board, Poona.

230. Local Board, Ahmednagar.

231. Local Board, Satara.

232.	Naik, Mr. D. J.	.. Secretary, Bhil Seva Mandal, Dohad.
233.	Secretary, Maharashtra Mahar Panchayat, Bombay.	
234.	Kulkarni, Prof. T. A.	.. Secretary, Social Service League, Bombay.
235.	Gupte, Mr. D. V.	.. Assistant Secretary, Adivasi Seva Mandal, Bombay.
236.	Malimath Mr. S. S.	.. President, Dharwar Legal Aid Society, Dharwar.

PRESIDENTS AND SECRETARIES OF SOCIETIES, MANDALS AND BOARDS—*contd.*

237. Local Board, Ratnagiri.

238. Secretary, Bombay Legal Aid Society, Bombay.

239. Secretary, Legal Aid Society, Nasik.

240. Shukla, Mr. H. S. ... President, Tenants' Legal Aid Committee, Ahmedabad.

241. Secretary, Borivli Sindhi Seva Samiti, Borivli, Bombay.

INDIVIDUALS.

242. Peerbhoy, Mr. A. A. .. Bombay.

243. Shah, Mr. Chimanlal C. ... Bombay.

244. Vakil, Mr. F. A. .. Bombay.

245. Vakil, Mr. N. K. ... Bombay.

246. Kane Mahamahopadhyaya P. V. .. Bombay.

247. Mehta, Mr. B. A. .. Rajkot (Saurashtra).

248. Mangalvedhekar, Mr. V. R. .. Bombay.

249. Divanji, Mr. P. C. .. Bombay.

250. Chaugule, Mr. K. A. .. Sangli.

251. Patil, Mr. B. L. .. Dhulia.

252. Wassoodew, Mr. K. B. .. Bombay.

253. Inspector General of Prisons, Province of Bombay.

254. Pusalkar, Mr. R. D. .. Kolhapur.

255. Dabhi, Mr. Fulsinhji B. .. Nadiad.

256. Khanolkar, Mr. V. N. .. Bassein Road.

257. Dalvi, Mr. M. Y. .. Kurla.

258. Barahia, Mr. Gulabdas J. .. Bombay.

259. Dawar, Mr. A. S. .. Bombay.

260. Bhube, Mr. M. M. .. Bombay.

261. Sirdeshpande, Mr. G. B. ... Bijapur.

262. Gandhi Divan Bahadur Chunilal M. .. Surat.

263. Chokshi, Mr. V. J.

264. Kotwal, Mr. R. B. .. Bombay.

265. Official Trustee of Bombay, High Court.

266. Jhaveri, Mr. Kalidas J. .. Ahmedabad.

267. Banaji, Mr. H. D. .. Bombay.

268. Nanavati, Mr. D. H. .. Delhi.

269. Pandya, Mr. R. D.

INDIVIDUALS—*contd.*

270.	Patil, Mr. S. M.	Bijapur.
271.	Patel, Mr. D. V.	Bombay.
272.	Modi, Mr. M. K.	Palanpur.
273.	Dewal, Mr. A. R.	Thana.
274.	Soman, the Hon'ble Mr. R. G. ..	President, Bombay Legislative Council, Bombay.
275.	Acharya, Mr. N. C. N.	Bombay.
276.	Jain, Mr. L. C.	Bombay.
277.	Abichandani, Mr. D. N.	Bombay.
278.	Joshi, Mr. N. G. } Sathe, Mr. S. H. }	Satara.
279.	Acharyar, Mr. S. K.	Madras. Agent, Federal Court and President Federal Court Agents' Association, Madras.
280.	Chandavarkar, Rao Bahadur M. G. ..	Karwar.
281.	Mavalankar, the Hon'ble Mr. G. V. ..	Speaker, Constituent Assembly of India, New Delhi.
282.	Trivedi, Mr. B. V.	Compensation Officer, Bombay.
283.	Koranne, Mr. S. V.	Jalgaon.
284.	Shah, Mr. Bechardas M.	Nadiad.
285.	Nahtu, Mr. C. M.	Bombay.
286.	Patil Mr. S. M.	Retired Mamlatdar, Bijapur.
287.	Rahimtoola, Mr. S. J.	Prothonotary, High Court, Bombay.
288.	Heble, Mr. M. N.	Backward Class Officer, Poona.
289.	Desai, Mr. A. G.	Advocate, High Court, Bombay.
290.	Tukol, Mr. T. K.	Special Officer, Political and Services Department, Bombay.

BARODA STATE.

291.	Chief Justice, Baroda.	
292.	Dholakiya, Mr. U. R.	Government Pleader, Petlad.
293.	Shah, Mr. Jethalal H.	Government Pleader, Sankheda.
294.	Oza, Mr. S. G.	Vyara Mahal Nyayadhish.
295.	Pavri, Mr. J. M.	Judge, High Court, Baroda.
296.	Bana Mr. Jahangirji R.	Government Pleader, Narvsari.
297.	Agashe, Mr. G. S.	Government Pleader, Padra.
298.	Desai, Mr. C. H.	1st Class Magistrate, Vijapur.
299.	Panchal, Mr. Trikamdas B. ..	Government Pleader, Vijapur.

BARODA STATE—*contd.*

300.	Parik, Mr. Prabhudas H. ...	... Assistant Judge, Mehsana.
301.	Parikh, Rajratna Mohanlal O.	
302.	Patel, Mr. Adamji S. Munsiff,	... Sankheda.
303.	Joshi, Mr. K. D. ..	.. Kadi (N. G.).
304.	Sub-Judge and First Class Magistrate,	Kathor.
305.	Mahal Nyayadhish, Visnagar.	
306.	Patwardhan, Mr. Gajanan M.	.. Munsiff, Amreli.
307.	Patel, Mr. Gopalbhai M. ..	.. Government Pleader, Chanasma.
308.	Mahal Nyayadhish, Chanasma.	..
309.	Lakhia, Mr. B. G. ..	.. Government Pleader, Visnagar.
310.	Chavan, Mr. V. R. ...	.. Sub-Judge, Kodinar (Amreli).
311.	Dhokai, Mr. D. N. ..	.. Government Pleader, Kodinar.
312.	Patel, Mr. C. B. ..	.. Sub-Judge and First Class Magistrate, Sinor.

DEBT RELIEF ASSISTANTS.

313.	Desai Dahyabhai V. ..	.. Olpad (Surat).
314.	Patil, Mr. T. K. ..	.. Bagalkot (Bijapur).
315.	Mehta, Mr. K. P. ..	.. Godhra (Panch Mahals).
316.	Desai, Mr. M. P. ..	.. Ankleshwar (Panch Mahals).
317.	Chhazed, Mr. S. D. ..	.. Sheogaon, (Ahmednagar).
318.	Ghospurkar, Mr. J. D. ..	.. Akola (Ahmednagar).
319.	Veerapur, Mr. M. S. ..	.. Muddebihal.
320.	Damle, Mr. Y. D. ..	.. Pimpalgaon (Nasik).
321.	Debt Relief Assistant, Nasik.	
322.	Paknikar, Mr. M. K. ..	.. Sholapur.
323.	Pol, Mr. L. B. ..	.. Nasik.
324.	Parikh, Mr. J. T. ..	.. Halol.
325.	Patil, Mr. J. S. ..	.. Borsad (Kaira).
326.	Hegde, Mr. G. S. ...	.. Honavar (Kanara).
327.	Lad, Mr. C. M. ..	.. Barsi.
328.	Kusanale, Mr. D. B. ..	.. Athani.
329.	Parikh, Mr. C. C. ..	.. Kapadvanj (Nadiad).
330.	Wadekar, Mr. N. S. ..	.. Yeola and Sinnar (Nasik).
331.	Gandhalikar, Mr. D. S. ..	.. Amalner (West Khandesh).

DEBT RELIEF ASSISTANTS—*contd.*

332.	Wani, Mr. P. N.	..	.. Dhulia.
333.	Deshpande, Mr. N. A.	...	.. Nandurbar at Shahabada.
334.	Gujnath, Mr. D. C.	...	.. Shirpur (West Khandesh).
335.	Joshi, Mr. R. V.	...	.. Nandurbar (West Khandesh).
336.	Parikh, Mr. Natverlal B.	...	.. Dholka (Viramgaum).
337.	Dingankar, Mr. V. J.	...	.. Chiplun (Ratnagiri).
338.	Bijjur, Mr. B. N.	...	.. Ranebennur (Dharwar).
339.	Jog, Mr. S. S.	..	.. Chikodi (Belgaum).
340.	Kulkarni, Mr. K. M.	...	.. Gadag (Dharwar).

TRADE UNIONS.

341. Air India Employees' Union, Bombay.

342. Textile Labour Association, Ahmedabad.

343. Bombay Mint Kamgar Union, Bombay.

APPENDIX III.

Names of Witnesses Examined.

1.	Shah, Mr. M. C.	..	Member, Industrial Court, Bombay.
2.	Desai, Mr. Y. D.	..	Civil Judge, Islampur (Satara).
3.	Divanji, Mr. P. C.	..	Civil Judge, Senior Division, (Retired).
4.	Sethna, Mr. D. P.	..	Incorporated Law Society, Bombay.
5.	Mankodi, Mr. R. M.		
6.	Gandhi, D. B. C. M.	..	Advocate, Surat.
7.	Dawar, Mr. A. S.	..	Advocate, Small Causes Court, Bombay.
8.	Soman, The Hon'ble Mr. R. G.	..	President, Bombay Legislative Council.
9.	Miabhoy, Mr. N. M.	..	District Judge, Poona.
10.	Lalkaka, Mr. M. D.	..	Chief Judge, Small Cause Court Bombay.
11.	Muzumdar, Mr. P. L.	..	Secretary, Harijan Seva Sangh, Sabarmati.
12.	David, Mr. B.	..	Judge, Small Causes Court, Poona.
13.	Saptarushi, Mr. C. M.	..	Bar Association, Ahmednagar.
14.	Vyas, Mr. P. D.	..	Judge, Labour Court, Ahmedabad.
15.	Sarela, Mr. A. S.	..	Extra Assistant Judge, Thana.
16.	Trilokekar, Mr. M. K.	..	Judge, Labour Court, Sholapur.
17.	Raut, Mr. D. P.	..	Superintendent, Yeravda Central Prison, Poona.
18.	Jhaveri, D. B. N. M.	..	Bar Association, Surat.
19.	Khandalawalla, Mr. Karl J.	..	Judges, City Civil Court, Bombay.
20.	Bhatt, Mr. J. C.		
21.	Shah The Hon'ble Mr. Justice J. C.	..	Judge, High Court, Bombay.
22.	Heble, Mr. M. N.	..	Backward Class Officer, Poona.
23.	Kulkarni, Prof. T. A.	..	Social Service League, Bombay.
24.	Shukla, Mr. H. S.	..	Tenants' Association Legal Aid Committee, Ahmedabad.
25.	Saraf, Mr. V. R.	..	District Judge, Khandesh.
26.	Acharya, Mr. N. C. N.	..	Bombay Legal Aid &
27.	Dubash, Mr. K. J.		
28.	Shertukde, Mr. S. G.	..	Association, Presidency ·i-strates' Court, Esp.
29.	DeSouza, Mr. E. F.		Bombay.

30.	Gordhandas, Mr. M. J.	..	.. Presidency Magistrate, 10th Court, Andheri.
31.	Palekar, Mr. S. B.	..	.. District Judge, Kolhapur.
32.	Bakhale, Mr. P. S.	..	.. Judge, 1st Labour Court, Bombay.
33.	Dixit, Mr. N. K.	..	.. Bar Association, Dharwar.
34.	Patil, Mr. B. D.		
35.	Gandhi, Mr. B. K.		.. Bar Association, Ahmedabad.
36.	Trivedi, Mr. B. V.	..	.. Compensation Officer, Bombay.
37.	Tukol, Mr. T. K.	..	.. Special Officer, Political and Services Department, Bombay.
38.	Peerbhoy, Mr. A. A.	..	.. Advocate (O. S.), High Court, Bombay.
39.	Koparkar, Mr. Y. G.	..	.. Bar Association, Dhulia.
40.	Kazi, Mr. K. B.		
41.	Shah, Mr. B. M.	..	.. Bar Association, Nadiad.
42.	Choksi, Mr. H. M.	..	.. Government Pleader, High Court, Bombay.
43.	Purshottam Trikamdas, Mr.		.. Bar Council, High Court, Bombay.
44.	Wassoodew, Mr. K. B.	..	.. President, Bombay Revenue Tribunal, Bombay.
45.	Baptista, Mr. Survulus	..	.. Bar Association, High Court, O. S. Bombay.
46.	Divan, Mr. B. J.		
47.	Chhabria, Dr. Govindram T.		.. Borivli Sindhi Sewa Samiti.
48.	Madbhavi, Mr. G. R.	..	.. Western India Advocates' Association, High Court, Bombay.